
The Economic Policy Scrutiny Committee on the Northern Territory *Sex Industry Bill 2019*

Submission to the Inquiry

Andrea Tokaji - 11 October 2019



PHOTO: [The NT Government has released a discussion paper on how the region's sex industry is regulated.](#) (ABC News)

ABOUT

Andrea Tokaji is a trained international human rights lawyer, completing a PhD in Slavery in Business supply chains (NDU), with over 10 years of anti-slavery lobbying, advocacy and legal education training experience, was the Founder and CEO of Fighting for Justice Foundation working in this area of human rights in the Asia region, including into Thailand, Cambodia, Myanmar, in Refugee camps, in the USA and Geneva since 2012.

Andrea has been an advocate of women's rights nationally and internationally, providing vulnerable women with advocacy, lobbying and legal education pathways as a form of prevention in their communities against victimisation and exploitation since 2009.

Andrea is a partner of Hilary Clinton's Vital Voices women in anti-trafficking leadership, participating in training in the USA (2016) and has presented on Modern-day slavery legislation at the Geneva Institute of Leadership and Public Policy (2016).

As a legal academic, Andrea lectures on, and writes about sustainable business practices human trafficking and slavery and other related international human rights law matters. As a former political candidate, Andrea applies her years working in procurement, government and the UN into her lobbying advocacy work. As a Mediator, Andrea strives to bring resolution to workplace and corporate conflict.

As a former refugee child, Andrea is passionate about providing access to human rights legal and education pathways for vulnerable people.

Introduction

On 18 September 2019 the Legislative Assembly referred the Sex Industry Bill 2019 to the Economic Policy Scrutiny Committee for inquiry and report. I welcome the opportunity to make a submission to this Inquiry. I acknowledge that this is a difficult area of law to legislate, and there are several sometimes competing agendas of economics, social, political, historical, human rights, gender equality, criminal and psychological facts for consideration.

I also acknowledge that there are consequential flaws with the current criminalisation of prostitution/sex work legislative models, as there are fundamental flaws with the decriminalised and legalised models of prostitution, exemplified by several jurisdictions, such as Sweden, Iceland, Finland, Denmark, the Netherlands, South Korea, Canada, France, Israel and now Germany who have considered the Nordic-like legislation that criminalises the demand for commercialised sex while keeping the sale legal - to protect women under this framework. The strength of the Nordic model legislation is that it provides men who so desire addiction therapy and education programs, women with exit programs out of the industry with alternate economic streams, and education to the general populace on this human right compliant - gender equal framework of prostitution laws.

Northern Territory as a jurisdiction has attracted specific and unique challenges in relation to prostitution and sex work, including the exploitation of homeless vulnerable women, aboriginal women and Aboriginal minors who exchange sex for ciggies and food. I will take a moment to reflect on these serious social, economic human rights matters from reported cases.

As part of the Northern Territory Government's discussion paper in 2013, the extent of the illegal sexual activities operating in plain sight within the Darwin CBD was revealed, stating: *"In the last two to three years, the Northern Territory, particularly in Darwin, has seen significant growth in the number of standalone massage parlours that, alongside their therapeutic massage services, provide erotic or sexual services,"* the discussion paper reads. *"Currently there are no licensed escort agencies, and any other business that provides sexual services are not operating in compliance with the Act."* ... Anecdotal evidence suggested that in a number of massage parlours, sexual services are offered at the end of the normal massage service."

In 2013, it was reported the homeless Aboriginal women were exchanging sex for food, alcohol and cigarettes on the street. Paul Toohey¹ reported that men cruise Darwin's streets and parks targeting homeless Aboriginal women, known locally as long-grassers, whose lives are mired in poverty, social exclusion, stigma, hunger, trauma, violence, deteriorating health and addiction.

One such victim states: *"The man comes up and points out what woman he wants,"* she says. *"I've done it plenty times, to get alcohol, food and everything, and the drugs as well. I was hooked on it. I needed it. I was getting food and I felt good. Now I've stopped."*

The woman says she considered herself a prostitute. The woman's sister, aged 45, did too.

"I used to go looking for men, for grog and smokes," she says. *"For a box of moselle. It was every morning, every day. White men, Greek men – all for a box of moselle."* It has been part of life in the north since frontier times: Aboriginal women used as sexual commodities. And, we have allowed it. Our laws have allowed it - instead of protecting our most vulnerable.

Until now, no researchers have ventured into the long grass and asked Aboriginal women to tell their stories of this common but unspoken sex trade. What has emerged from the work of Dr Catherine Holmes and Dr Eva McRae-Williams, working through the Batchelor Institute, is a visceral insight into the dangers and desperation of the lives of long-grass women.

¹ Paul Toohey, *Long-grassers: Indigenous women trade sex for food and cigarettes*; AN Aboriginal woman, attractive with an easy smile, tells her story of the unspoken sex trade for those on the streets of Darwin, 6 May 2013, [news.com](https://www.news.com.au/national/paul-toohey-darwin/news-story/9d05c8824501106d8e4423128d243afd) at: <https://www.news.com.au/national/paul-toohey-darwin/news-story/9d05c8824501106d8e4423128d243afd>

The study revealed that the women feel excluded from society and saw trading sex as an opportunity to earn cash, grog, cigarettes and ganja for their groups, and also looked forward to travelling in nice cars or, on rare occasions, being taken to private homes, with stocked fridges and showers. It was a temporary escape, and a better deal, than the routine rape they suffered at the hands of their own men.

One woman said: *"The blackfellas sneak up on you when you are passed out, alone, and do their thing and leave. Then another one comes and climbs on. And another."* The researchers interviewed 89 women. They carried knives to protect themselves when sleeping in long grass groups at night. Some women regarded what the researchers label "transactional sex" (TS) -- or as the women call it, "selly--welly" - as a positive opportunity, because they got something in return. *"Study participants confirmed that women, usually under 40, would be sold by choice or coercion, although not a lot of pressure was necessary,"* says the report.

Dr Holmes says the women suffer a high prevalence of post—traumatic stress syndrome, which she defines by exposure to threats or violence or death, or being witness to it. Most of the exposure came from their own men. She says it made sense they carried knives: *"They need to be hyper-vigilant to survive and they have very clear evidence that the long grass is a dangerous place."*

Rates of certain sexual infection are reported as higher in the NT than anywhere else in Australia, and especially among indigenous people. The rate of homelessness in Darwin is higher than anywhere else in Australia. The researchers cite figures of 234 homeless per 10,000 people, compared 41 per 10,000 in Melbourne, and 47 per 10,000 in Adelaide.

The then Attorney-General of Northern Territory John Elferink said the idea they could not help themselves was wrong. *"The assumption is that these people are too useless and the state's got to step in and help,"* he said. *"I don't subscribe to that at all. There is nothing that decays self--worth as some of the lifestyle choices these people make, backed up by a welfare system that does nothing to offset the negative and decaying effects on their spirits and well—being. "If anyone in these circumstances wants to lift themselves out of these circumstances, the best form of welfare is a job."* Mr Elferink said "rescuing" people with welfare-based models would only create more vulnerability among the women. *"The transactional sex component and exposure to rape component is a direct result of policies which do not place any expectation upon the person who is engaging in self-destructive conduct,"* he says.²

In 2008, it was reported that trading young Aboriginal girls for sex had been happening for at least 15 years in a Northern Territory mining town, as reported by one of Australia's most powerful Aboriginal leaders.

² Paul Toohey, *Long-grassers: Indigenous women trade sex for food and cigarettes*; AN Aboriginal woman, attractive with an easy smile, tells her story of the unspoken sex trade for those on the streets of Darwin, 6 May 2013, [news.com](https://www.news.com.au/national/paul-toohey-darwin/news-story/9d05c8824501106d8e4423128d243afd) at: <https://www.news.com.au/national/paul-toohey-darwin/news-story/9d05c8824501106d8e4423128d243afd>

The then Northern Territory Chief Minister Paul Henderson conceded that police had known about the shocking allegations for “a significant period of time”. Despite this, there were no arrests over claims of child prostitution at Nhulunbuy, 650km east of Darwin. Non-Aboriginal people working there are believed to be exchanging cash, drugs, taxi rides and alcohol for sex with teenagers, some as young as 13. Indigenous leader Galarrwuy Yunupingu said the sex trade had been operating for the past 15 years and at least 12 girls were currently engaged in the trade. Asked if he thought it was embarrassing that police had failed to make inroads, Mr Henderson replied: “The onus is on people who have that information to report it to police,” he said.³

The most vulnerable women and girls, including Aboriginals, the homeless and children are being targeted, raped, exploited and abused in the Northern Territory, with impunity. The law is designed to be safety net to protect the most vulnerable. The Sex Industry Bill 2019 needs to ensure it accomplishes this task.

While police officers reportedly largely turned a blind eye to the outlawed activities, a 2015 crackdown saw NT Police and Australian Border Protection Force officers raid 19 parlours across Darwin and Palmerston and “uncovered sufficient evidence to suggest some were being used as illegal brothels. No arrests were made during these raids, although three people were deported for breaching visa conditions.”⁴

Prostitution as a form of Gender Inequality

The mortality rate of women in prostitution is 200 times higher than the general population.

According to longitudinal University studies, murder accounts for 50% of the deaths of women in prostitution. 89% of 854 prostituted women interviewed urgently wanted to escape prostitution. There is overwhelming evidence that prostitution is inherently harmful and dehumanising, and that it fuels sex trafficking. This link needs to be recognised legislatively and socially. We need to move toward practical action to reduce the demand for prostituted women.

- ❖ 1 in 10 men in the world have purchased a prostituted woman.
- ❖ The most common demographic is a man between 35 and 44 years old.
- ❖ Men, as consumers and therefore the drivers of demand for the porn, prostitution industries have a role to play in ensuring women are not exploited, harmed or enslaved in such conditions.

³ Tara ravens, *Police 'knew about' teen sex trade in NT*, 4 April 2008, at: <https://www.smh.com.au/national/police-knew-about-teen-sex-trade-in-nt-20080404-23nc.html>

⁴ Tara ravens, *Police 'knew about' teen sex trade in NT*, 4 April 2008, at: <https://www.smh.com.au/national/police-knew-about-teen-sex-trade-in-nt-20080404-23nc.html>

Research in 2003 looked at the prevalence of Post Traumatic Stress Disorder (PTSD) amongst women in prostitution across nine countries. It was found that 68% of those in the sex trade experienced PTSD. This rate is comparable to the trauma faced by rape survivors and survivors of state-sponsored torture.

For prostituted women working in Sydney ...

- ❖ More than half left home before the age of 16;
- ❖ The median range for school completion was year 9;
- ❖ 14% had no fixed address or were currently homeless;
- ❖ 50% reported being homeless within the past 12 months;
- ❖ ¾ experienced child sexual abuse before the age of 16;
- ❖ 1/3 reported moving into prostitution before the age of 18;
- ❖ 85% reported experiencing violence in prostitution, particularly:
 - ❖ physical assault (65%),
 - ❖ rape with gun / knife (40%),
 - ❖ rape without weapon (33%) and
 - ❖ attempted rape (21%);
 - ❖ a little over half (39 respondents) reporting severe depressive symptoms;
- ❖ 54% reported having attempted suicide and ¼ of these had been before the age of 18;
- ❖ 50% also screened positively for a diagnosis of Borderline Personality Disorder (BPD);
- ❖ approximately half the total sample also meeting the criteria for PTSD; and
- ❖ 31% of respondents reported current PTSD symptoms.⁵

ACT sex worker attacks: Police hunt for three men over six incidents in Canberra - Reported by the ABC News 22 September 2016

There have been at least six attacks where groups of two or three men have made a single appointment with a female sex worker. Officers believe one of the men makes the appointment and then lets the other men into the location.

Police said the women were aggressively sexually assaulted by the group, and were sometimes held at knifepoint, with some of them robbed. Police also believe there may be more victims who have not come forward.

ACT Policing's Sexual Assault and Child Abuse Team (SACAT) is investigating the attacks as Operation Sparren. "Police recognise the emotional hardship and courage involved in coming forward if you are a victim of a sexual assault," Detective Sergeant David Crowe said.

⁵ - The National Drug and Alcohol Research Centre Article - 'Mental health, drug use and risk among female street-based sex workers in greater Sydney', 2005 (The project interviewed 72 women who had been involved in prostitution for 3 months or more.)

Can voluntary prostitution exist if ...

Most (80%) of prostitutes have experienced child sexual abuse or other significant forms of trauma; many prostitutes are from vulnerable backgrounds; many prostitutes are coerced into doing things they do not want to do; many prostitutes fear for their lives or safety while conducting their 'work'; and many prostitutes feel they have no other options as a means of work and providing for their families.

The human rights community must consider

The voices of survivors of all forms of violence against women, including in the sex trade, must be heard. They must not be silenced or threatened. The debate about men's violence toward women *has to* include the violence perpetrated by men against the millions of women worldwide who are part of the \$150 billion dollar per annum sex trade (ILO). Many of these women have been trafficked, tricked or coerced into transactional sex as a result of war, poverty, terrorism, ecological disasters, or socio-economic disadvantage. Most have little or no education, many are homeless, and a disproportionate number have been sexually abused as children.

Women's and girls' safety is at stake - for the whole community!

A study published in 2015 in the *Journal of Interpersonal Violence* co-authored by UCLA Professor Neil Malamuth profiled men who buy sex. It found that men who buy sex are more likely to report having committed rape and other aggressive acts. Professor Malamuth said:

"Our findings indicate that men who buy sex share certain key characteristics with men who are at risk for committing sexual aggression. Both groups tend to have a preference for impersonal sex, a fear of rejection by women, a history of having committed sexually aggressive acts and a hostile masculine self-identification. Those who buy sex, on average, have less empathy for women in prostitution and view them as intrinsically different from other women."

The Links Between Slavery, Exploitation, Human Trafficking and Prostitution Laws

A 2012 article in the journal *World Development* reported that "countries with legalised prostitution have a statistically significantly larger reported incidence of human trafficking inflows". According to the United Nations, Human trafficking affects every country of the world, as country of origin, transit or destination. Women and children make up the majority of these known slaves, and are predominantly subject to sexual exploitation - even if originally trafficked or exploited for other purposes. Victims from at least 127 countries have been found by the United Nations to be exploited in 137 States.

Prostitution and human trafficking for sexual purposes represent a serious obstacle to both social equality and gender equality.

There are an estimated 45.8 million slaves in the world today according to the Global Slavery Index, with the Asia Pacific having a regional proportion of 66.4% of the global number of those victims. The majority of the world's slaves - over 75% - are women and children.

According to estimates by the International Labour Organisation, The global annual profit generated by human trafficking amounts to USD \$31.6 billion in the following regions:

- ❖ USD 15.5 billion (49%) – in the industrial countries;
- ❖ USD 9.7 billion (30.6%) – in Asia and Oceania;
- ❖ USD 1.3 billion (4.1%) – in Central America.

“It is unacceptable that people – mostly women and children – are being purchased and exploited like merchandise. Victims of human trafficking and prostitution lose power over their lives and their bodies. They are robbed of the chance to enjoy their human rights.”

- Nyamko Sabuni: Swedish Minister for Integration and Gender Equality

As long as women are for sale, no woman will be viewed as equal in corporate boardrooms, in the halls of legislature, or in the home. Violence against women begins with disrespect. The demand of men to commodify women's bodies leads to a rise in the human trafficking and enslavement of women into the brothel industries.

The demand of men to commodify women and their bodies needs to be addressed as a fundamental driving force in our society, leading to gender inequalities, violence against women and a rape culture.

Human trafficking functions on the supply and demand economic principle - and women's bodies become its commodity. Prostitution laws have a preventative function in ensuring women and girls are not enslaved, traded into or abused and raped in the sex industry. “...both legalisation and decriminalisation permit prostitution to be recognised as legitimate work and pimps and brothel owners as legitimate business operators.”⁶

⁶ Mary Sullivan, Coalition Against Trafficking in Women.

Campaigns such as Ashton Kutcher's *Real Men Don't Buy Girls*, and Tom Meagher's *Prostitution, I Don't Buy It* campaign in Ireland has brought a more balanced human rights conversation about prostitution laws within gender equal considerations.



"We think that prostitution is one of the worst expressions of the unequal division of powers between men and women and this does not only bear on the prostitutes or those who buy the prostitutes' services but the whole of society. This is why we are now suggesting a criminalisation of the sex buyers. We are convinced that it will change attitudes and decrease violence in society. We are convinced that it will also decrease prostitution."

- Anne Maria Holli 2004



Legalising prostitution does not remove the stigma: *Turn Off The Red Light Campaign, Dublin, Ireland*

Normalising prostitution makes the abuse, violence and exploitation invisible and turns pimps and punters into businessmen and legitimate consumers.

Recognising prostitution as 'just a job' ignores the violence, poverty and marginalisation which drives women into prostitution, and means an end to services to support women out of prostitution – why would you need exit strategies for a 'normal' job?

According to former prostitute survivors of the trade, women don't want to be prostituted and the shame and stigma of prostitution persists despite legalisation.

Regardless of its legal status, women would prefer to get out of prostitution and usually feel ashamed of it.

CASE STUDY: Peter Sculley - Australian Paedophile Tourists

A 52-year-old Australian man faced the death penalty in the Philippines after he was accused of countless child sex offences. Scully was arrested in February 2015 and charged with multiple counts of sexual abuse, cyber sex, torture, rape, human trafficking and murder.

Peter Scully allegedly directed a sickening video where an 18-month-old baby girl was bashed and sexually tortured. The court heard Scully allegedly directed the video titled “Daisy’s Destruction”, where the infant was masked by a naked woman before being tied upside down by her feet and sexually assaulted and bashed. The masked woman was believed to be one of his two Philippine girlfriends. According to reports, the video was sold online for up to \$10,000.

Prosecutors argue he is also the mastermind behind a worldwide network selling extreme videos containing child sex and torture. “They were the most devastating thing I have ever seen,” prosecutor Ruby Malanog said. “I cried when I was watching them, in fact I feel like crying just now while talking about it. “It was hard to believe what I was seeing, that somebody could do those things to children.” It is understood the baby girl has been returned to her parents but is deeply traumatised.

An 11-year-old girl’s body was also found buried below a house rented by the accused. Prosecutors allege Scully sexually abused and strangled her. Another eight female victims aged up to 13 are also being held in witness protection while Scully pleads not guilty in court. The court hearings are expected to take years to complete.

On the night before Scully’s hearings, chief prosecutor of northern Mindanao region Jaime Umpa called for the reintroduction of the death penalty, meaning Scully will be executed. Under Philippine laws without this reform, Scully would be released after serving 30 years jail before being deported to Australia. “We don’t believe this is sufficient for these crimes that were committed,” Mr Umpa said.

“I made a pledge that I was going to start fighting human trafficking, and I started a foundation... we are building digital tools to fight human trafficking.”

Ashton Kutcher - Actor, Investor & Human Trafficking Innovator



International Standards

At the end of WWII, the United Nations States Parties adopted two key texts: the *Charter of the United Nations*, signed in San Francisco on 26 June 1945, and the *Universal Declaration of Human Rights* (UDHR), adopted by the United Nations General Assembly in 1948. These two founding texts of the international human rights corpus establish a fundamental principle: respect for and protection of the dignity and worth of the human person.

In 1949, the United Nations General Assembly paid consideration to *a particularly blatant violation of human dignity: prostitution and its exploitation by third parties*.

In the preamble to the *United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, of 2 December 1949, the States Parties recalled that prostitution is “*incompatible with the dignity and worth of the human person*”. Consequently, the UN undertook to combat pimping in all its forms and to ensure assistance was provided to prostituted persons.

In 1979, Article 6 of the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) reinforced this policy by explicitly requesting that States Parties: “*suppress all forms of traffic in women and exploitation of prostitution of women*”.

The *United Nations Declaration of the Elimination of Violence Against Women* states:

Article 1: “*For the purposes of this Declaration, the term “violence against women” means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.*”

This definition includes forced prostitution and sexual servitude.

Article 2: “Violence against women shall be understood to encompass, but not be limited to, the following: (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

In 2003 Kofi Annan, the Secretary-General of the United Nations, adopted special measures to prevent exploitation and sexual abuse, pertaining to all peacekeeping missions operating under UN command and control and to all UN staff. This so-called ‘*zero tolerance*’ policy, applicable only within the UN framework, makes a significant breakthrough in expressly prohibiting UN stakeholders from any “*exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour.*”

In the early 2000s, the United Nations developed international policies and instruments to supplement those already in place. Within the context of the fight against human trafficking, the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* (2000) includes: “***the exploitation of the prostitution of others or other forms of sexual exploitation***” within its use of terms referencing human trafficking and exploitation.

International Conventions and other instruments that deal with human trafficking include:

1. The *Palermo Protocol*, the United Nations’ supplementary protocol on the prevention, control and punishment of human trafficking, in particular, of women and children (ratified by Sweden in 2004).
2. The *United Nations Convention on the Rights of the Child* and its supplementary protocol on the sale of children, child prostitution and child pornography (ratified by Sweden in 1990 and 2006, respectively).
3. The *United Nations Convention on the Elimination of all Forms of Discrimination against Women* (ratified by Sweden in 1980, the first country in the world to do so).

The *Trafficking Protocol Article 3(a)* states: “*Trafficking in persons*” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum; the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The consent - implied or otherwise, of a victim of trafficking in persons to exploitation is irrelevant here.

“We are making an unequivocal statement to the poor, exploited women and girls when we—the citizens of wealthy countries—tell them that it’s not OK to buy human beings for sexual purposes.”⁷

⁷ Police inspector in Västra Götaland County and section head of the human trafficking group within the surveillance division.

The State Due Diligence Responsibility to Protect its Citizens from Harm

Following the rule of customary international law that obliges States to prevent and respond to acts of violence against women with due diligence, emphasised in international case law, and in soft law, through Rapporteur Recommendations, and the interpretation of international instruments such as the Committee's Commentary on the Convention of the Elimination of Discrimination Against Women (CEDAW) in various International Commentaries, it is clear that the State has an obligation to protect its citizens from harm, and to ensure any foreseeable harms is prevented.

The case of *Osman v United Kingdom*, as well as Commentary of the CEDAW Committee conclude that a state can be found complicit in human rights abuses perpetuated by non-State actors. In the landmark cases of *Bevacqua and S. v Bulgaria* and *Opuz v Turkey*, both cases held national governments responsible for failing to exercise due diligence to adequately protect individuals from domestic violence, recognising that a state's failure to exercise due diligence to protect women against domestic violence is gender-based discrimination, violating women's right to equal protection of the law.

The foundation for State responsibility was established in the case of *Velasquez Rodriguez v Honduras*, in which it was articulated that: the extent of the State's due diligence responsibilities extended to effective responses from law enforcement, formal measures of protection, including civil protection orders, and punishment and prosecution of perpetrators. The ruling in *M.C. v Bulgaria* affirmed and strengthened the State responsibility standards, noting that the State has a positive obligation to first enact criminal law provisions that criminalise non-consensual sex and then 'apply them in practice through investigation and prosecution'.

The connection between the State's obligations under the international principles of due diligence, and the State's responsibility to not only protect all persons from harm, but also prevent harm from occurring to them is clear and evident. Within the context of the international principle of the best interest of the child, children have a right not to be harmed psychologically, emotionally and physically, as laid out in the Convention on the Rights of the Child (CRoC). As signatories to this international convention, Australia has a due diligence responsibility to protect children from non-State actors perpetrating such harm against them.

In the Convention on the Rights of the Child, the State is called to take all appropriate measures to protect the child from all forms of violence, injury or abuse, including sexual abuse, including through forms of prevention.⁸

⁸ For a full commentary on these cases, please refer to my legal paper: "The Incompatibility of Prostitution Laws with International Human Rights" [2017] WAJurist 7; (2017) 8 The Western Australian Jurist 263, at: <http://classic.austlii.edu.au/au/journals/WAJurist/2017/7.html>

The Nordic Model

The Nordic Model laws on prostitution was initially implemented in Sweden in 1999 within the women's peace bill. **Chapter 6 s8 of the Swedish Penal Code states:**

"Anyone who promotes or encourages or improperly exploits for commercial purposes casual sexual relations entered into by another person in exchange for payment is guilty of a criminal offence and shall be sentenced for procuring to imprisonment for at most four years."

Sweden's legislation officially recognises that it is unacceptable for men to purchase women for sexual exploitation, whether masked as sexual pleasure or 'sex work'. The legislation was based on the foundation that the system of prostitution is a violation of gender equality. The law moves away from targeting the person in prostitution, to the users. The law is a catalyst for changes in societal attitudes and by eradicating the social prejudice it facilitates women in prostitution accessing societal and medical services. This is demonstrated in Sweden where 80% of the population support the law and the issue today is more about how the law is enforced, then questioning the existence of the law itself.

The Swedish Government Declared:

*"For a long time, Sweden's official attitude to prostitution has been that it is an unacceptable phenomenon in our society and must be combated. Since 1 January 1999, it has been a crime to buy sexual services in Sweden, and an individual who obtains a casual sexual relation for compensation is sentenced to pay fines or serve a prison term of up to six months for the purchase of sexual services. In contrast to previous measures against prostitution, the criminalisation of the purchase of sexual services targets the demand, i.e., the sex buyer or the prospective sex buyer. Since then, discussions on the ban have sprung up in both Sweden and internationally, and various interpretations of the consequences of criminalisation have been put forth."*⁹

Nordic Model laws decriminalise all people who sell sex and provide exit programs for those who wish to leave the sex trade, including services aimed at providing housing, health, education and employment support. The prostitution law is part of broader legislation known as the Women's Peace and Sanctuary Laws. As a result of criminalising buyers of sex these laws have had a marked effect on cultural attitudes to women, especially men's attitudes, and has been effective in reducing sex trafficking.

In Sweden, once the police have succeeded in identifying a suspect, the prosecutor is contacted and then takes charge of the preliminary investigation. The following are the three main areas of prosecution of users of sexual services under the Swedish laws:

1. The purchase of sexual services
2. Procurement
3. Human trafficking

The goal is to damage the market - driven by brothel owners, pimps, but also men buying sex, and to starve it of its buyers. Jonas Henriksson, a Swedish Detective Sergeant who works combating prostitution and trafficking – speech in the European Parliament.

⁹ Minister of Justice Beatrice Ask; [The Ban against the Purchase of Sexual Services. An Evaluation 1999–2008](#).

Due to demand, over three million women and girls are sold to men on a daily basis in mega-brothels in [India](#) alone.

“In Sweden it is understood that any society that claims to defend principles of legal, political, economic, and social equality for women and girls must reject the idea that women and children, mostly girls, are commodities that can be bought, sold and sexually exploited by men” - Ekberg


The Kings County (USA) Police Reform Option

In 2016, under the Hilary Clinton Foundation for women leaders in human trafficking, I visited and spoke to several US Government officials, human rights organisations, international organisations, Charities, survivors, Judges and lawyers all working in New York, Dallas and Washington DC all working towards eliminating the criminalisation of women and girls in the sex industry, who may also be victims of cross-jurisdictional human trafficking and sexual servitude.

To my mind, the King’s County policy reform model that focuses on re-introducing victim survivors to the workforce through specialised care and support programs, in cooperation with local businesses stands out as a policy model worth replicating in the Northern Territory, given the economic push/pull factors of prostitution and its associated harms to women’s rights and safety.


In the King’s County approach, survivors of prostitution proposed a policy reform platform including three main pillars of priority: criminal justice reforms, fair employment, and standards of care. The sexual exploitation of prostituted individuals has lasting effects which can carry over into many aspects of life. In order to remedy these effects and give survivors the opportunity to live a full and free life, Kings County use a survivor-centred approach to the following three pillars to create change.

1. Necessary reforms is in the criminal justice system to recognise survivors as victims of crime and not perpetrators, while holding those who exploited them fully responsible;
2. Reforms to ensure survivors are assisted in finding fair employment by offering vocational training, financial counselling, and educational scholarships, as well as offering employment opportunities that utilise survivors’ vast array of skills and interests; and
3. Ensuring that the standards of care for survivors exiting prostitution focus on supporting survivors in our journeys and support short- and long-term resources that empower them.



What can we do?

- Provide jobs
- Discourage demand through business policies to curb trafficking
- Build awareness among employees through training
- Use skills and resources to combat exploitation



King County

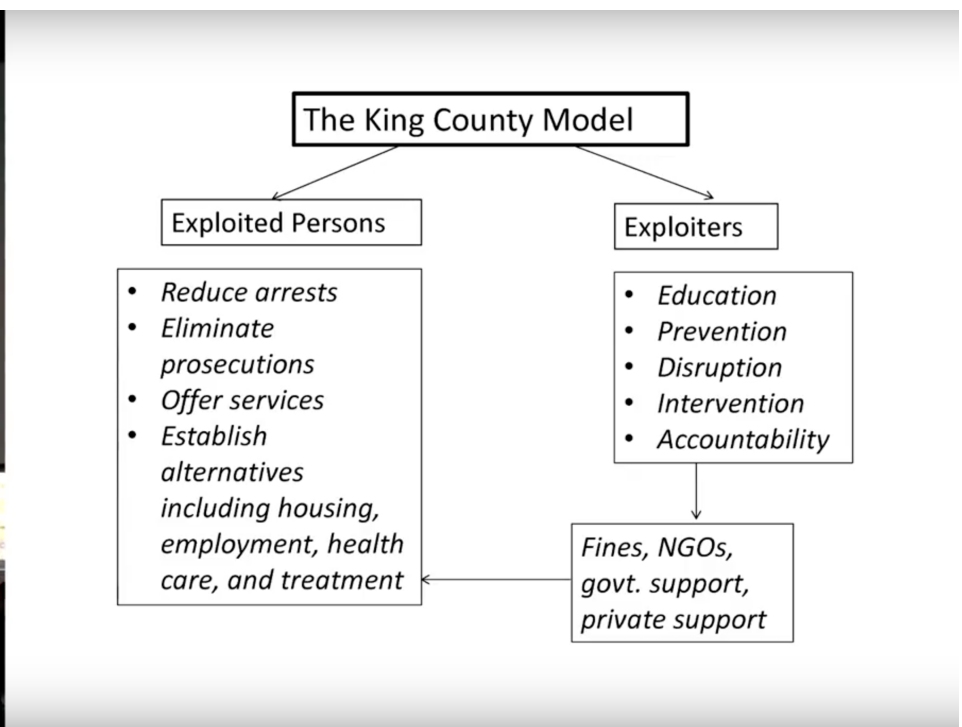
These systemic changes are seen as necessary to recognise survivors as valuable human beings with dignity and to support survivors in fulfilling their potential as contributors to society in all forms.¹⁰

The sexual exploitation of prostituted individuals has resulted in the inability of those who survive to attain the full potential of life, freedom, and happiness. Remedying the lasting effects of this form of exploitation has yet to be realised fully.

We need a survivor-centred movement that focuses on the consequences of experiencing sexual commodification and creates solutions to ending sexual exploitation. A survivor-centred approach will provide concrete solutions to the harm caused by prostitution.

The core tenets of policy reform platform should centre on respect, dignity, and the fact that consensual sex should not be bought, sold, or traded.

Kings County's sex work legislation moves towards a more victim-centred approach. A victim-centred approach is one recognising that prostitution is not about the commodification of sex and of people, but of gender inequality. *'It is not possible to protect the health of someone whose 'job' means that they will get raped on average once a week'.* Women who work in prostitution exhibit the same incidence of traumatic brain injury as a result of being beaten, hit, kicked in the head, strangled or having one's head slammed into objects which have been documented in torture survivors and battered women.



¹⁰ A Morrissey, A Franklin, Alisa L. Bernard, Marian Hatcher; Dignity: A Journal on Sexual Exploitation and Violence Exited Prostitution Survivor Policy Platform, Volume 3 | Issue 3 Article 10 December 2018, at: <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1133&context=dignity>

Over the last six years, King County cases have involved at least 88 minors, ranging in age from 11 to 17. More than half were 15 or younger when authorities found them, which means they likely entered prostitution even earlier.

Between April 2014 and September 2015, some of those kids were among the 126 sexually exploited people aged 17 and under referred to case management. Since 2013, about 125 men countywide have been charged with knowingly trying to meet up with a detective posing as a 15-year-old girl. In 2015, the prosecutor's office did not file prostitution charges against a single minor.

Compliance with Australia's Modern Slavery Act (Cth)

As business owners, Brothels need to ensure that they are compliant with new Federal Legislation compelling companies over a certain threshold and all businesses voluntarily to check for, and report on, slavery in their raw material and service supply chains.

Given the transient nature of the sex industry, and the non-transparent nature of the clientele and business practices, it is imperative that Brothel business owners, just as any other business ensures that there is no slavery, exploitation and human trafficking of any kind in their business.

Section 24 of the NSW Modern Slavery Act (Cth) 2018 sets out the requirement that commercial organisations must prepare a modern slavery statement that outlines their actions to address modern slavery in their operations and supply chains. The NSW Act requires commercial organisations over \$50million annual profit and under the Commonwealth specified reporting¹¹ threshold of \$100million annual turnover to prepare an annual modern slavery statement on the steps they have taken during their financial year to ensure their operations and supply chains do not involve modern slavery.

¹¹ The Commonwealth regulation requires reporting entities over the 100 million threshold to submit a 'modern slavery statement' to the Minister for Home Affairs, including; 1. the identity of the reporting entity; 2. the structure, operations and supply chains of the reporting entity; 3. the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls; 4. the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks; 4. how the reporting entity assesses the effectiveness of such actions; 5. the process of consultation with any entities the reporting entity owns or controls or is issuing a joint modern slavery statement with; and 6. any other information that the reporting entity, or the entity giving the statement, considers relevant.

A range of existing international standards and emerging national laws, based on the United Nations Guiding Principles on Business and Human Rights (UNGPs) emphasise the role of due diligence in identifying and avoiding risks to human rights in labour hire, including the risk of modern slavery, which is a reality in Australian workplaces, with the Global Slavery Index identifying 17,000 slaves here in Australia.

Under the UNGPs, companies should have in place “a human rights due diligence process to identify, prevent, mitigate and account for how a company addresses their impacts on human rights”.¹²

Principle 17 of the UNGPs, states:

“In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

Human rights due diligence: (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships; (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations; (c) Should be ongoing, recognising that the human rights risks may change over time as the business enterprise’s operations and operating context evolve.”¹³

Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.

¹² ¹² United Nations Guiding Principles on Business and Human Rights, Office of the High Commission, New York and Geneva, 2011, p 18 at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

¹³ United Nations Guiding Principles on Business and Human Rights, Office of the High Commission, New York and Geneva, 2011, at: https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

On November 9, 2016, the International Labour Organisation (ILO) announced that its *International Protocol P029 of 2014 to the Convention Concerning Forced or Compulsory Labour (the Forced Labour Convention of 1930)* had officially entered into force. The Protocol and its Recommendations bring the International Labor Organisation standards against forced labour into the modern era.

The Protocol establishes the obligations to prevent forced labour, protect victims and provide them with access to remedies, and emphasises the link between forced labour and trafficking in persons. In line with Convention No. 29, the Protocol also reaffirms the importance of prosecuting the perpetrators of forced labour and ending their impunity.

The Forced Labor Protocol seeks to recognise that the prohibition of forced or compulsory labour forms part of the body of fundamental rights, and that forced or compulsory labour violates the human rights and dignity of millions of women and men, girls and boys, contributes to the perpetuation of poverty and stands in the way of the achievement of decent work for all, and noting that the effective and sustained suppression of forced or compulsory labour contributes to ensuring fair competition among employers as well as protection for workers.¹⁴

Part XIII of the *Treaty of Versailles* was the outcome of the Commission's work, and it became the founding text of the ILO with most of its provisions contained in the ILO's Constitution. The Preamble to Part XIII of the Treaty of Versailles states: "*Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice ...*".¹⁵

The world has recognised that the principle of social justice requires a due diligence human rights approach to the eradication of slavery, trafficking and criminality of all kinds in the labor force globally for the sake of global peace, security and justice.

¹⁴ P029 - Protocol of 2014 to the Forced Labour Convention, 1930, Protocol of 2014 to the Forced Labour Convention, 1930 (Entry into force: 09 Nov 2016), Adoption: Geneva, 103rd ILC session (11 Jun 2014) at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029

¹⁵ International Labour Office; Official Bulletin, Volume I April 1919-AUGUST 1920, Geneva 1923, at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---jur/documents/genericdocument/wcms_441862.pdf

Recommendations in response to the Northern Territory Sex Industry Bill 2019

The following are my recommendations and legal human rights observations:

In relation to:

Whether the Assembly should pass the Bill

It is my view that this Parliament should not pass this Bill without first considering their international human rights due diligence obligations to protect women from harm in their workplace, as outlined by the United Nations Guiding Principles, the Convention on the Elimination of Violence Against Women, and the international case law that calls governments to account when this is not achieved through due diligence measures.

In relation to:

Whether the Assembly should amend the Bill

In accordance with **Section 3(e)** of the Sex Industry Bill 2019 “to enable the sex industry to operate in accordance with the laws of the Territory and the Commonwealth as they apply to all individuals and businesses generally, including laws governing employment, occupational health and safety, workers compensation and rehabilitation, planning, taxation and discrimination” I submit a consideration of the Kings County model of employment exit program for women in the sex industry, considerations of Australia’s *Modern Slavery Act* (Cth) 2018, and the international principles laid out above, in relation to human rights, gender equality measures and the States due diligence obligation to prevent harm from occurring to its citizens.

1. **Section 7 of the Sex Industry Bill** (the Bill) in relation to “Contract for sex work not void No contract for or to arrange sex work is illegal or void on public policy or similar grounds” - should be amended to include that said contracts cannot be enforceable if they are in direct conflict with international and national workers rights, human rights and womens rights principles, for the protection of the women working in Brothels.

2. **Section 8 of the Bill:** “Adoption and promotion of safe sex practices Operators and sex workers must take all reasonable steps to adopt and promote safe sex practices” should include an explicit requirement for sex workers as well as clients of sex workers to disclose whether they have HIV Aids, and that both parties have the right to refuse service if one or the other party has disclosed as having HIV Aids.

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3. **Section 9(3) of the Bill:** *“or to recover damages for”* should be removed.
 4. **Section 10** pertaining to offences - should include the offences of Brothel owners, managers and other relevant overseeing personnel who may engage in slavery, exploitation or human trafficking - in accordance with the *Criminal Code* (Cth) 1901.
 5. **Section 12** of the Bill that deals with Causing or allowing child to perform sex work or work in sex services business - should deal with cyber sex crimes, paedophilia and related offences, in compliance with the Criminal Code, and other like-legislation in NSW.
 6. **Sections 12(1)(c), 12(2)(c), 13(1)(c), 13(2)(c), 14(1)(c) and 14(2)(c)** should be removed, as child is defined as a person under the age of 18 years old.
 7. **Section 15(2)** of the Bill should include - or if an advertisement or contract misleads a person as to the nature of the sex work.
 8. **Section 16** should include the requirement for Northern Territory Nurses to conduct periodical (monthly) health checks of women working in brothels - for the purpose of their own health and safety. If such health checks are refused by the managers and owners of the brothels, the Authorities or Commissioner should have the right to shut the establishment down for health reasons.
 9. **Section 17** is concerning, as it implies that entire housing or apartment complexes can be turned into working Brothels, without regard for the children, the vulnerable and elderly living in the same complex or community. Brothels should operate only in zoned areas on a registration basis, to ensure the safety of the wider community.

For this reason, this section should be deleted.

10. **Section 6(2)(b)** *‘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’*. The Bill seems to protect criminal sex industry entrepreneurs from interference from police, and specifically excludes police involvement in sex industry oversight and investigation. This section should be struck and replaced with powers of investigation for Northern Territory Police into all brothels - legal and illegal, registered and non-registered, as exploited, enslaved and abused women in brothels need to know that the arm of the law is on their side, and ready to protect them.

In relation to: Whether the Bill has sufficient regard to the rights and liberties of individuals

In relation to **section 3(a)** of the Bill: “to decriminalise sex work and legalise contracts in relation to sex work, as noted above, I do not believe that decriminalisation is a gender equal human right compliant legislative approach to prostitution laws, as evidenced by the New Zealand law reform experience. Since decriminalisation street prostitution has spiralled out of control, especially in New Zealand's largest city, Auckland. A 200-400% increase in street prostitution has been reported.

Melissa Farley, a psychologist and prolific researcher on prostitution internationally writes¹⁶: *after decriminalisation in NZ, violence and sexual abuse in prostitution continued as before. “The majority of sex workers felt that the law could do little about violence that occurred” and that violence was an inevitable aspect of the sex industry, according to the Law Review Committee.*

After the law was passed, 35 per cent of women in prostitution reported that they had been coerced by johns. Women in massage parlour prostitution who were under the control of pimps reported the highest rate of coercion. Five years after legally defining prostitution as work, the New Zealand law was unable to change the exploitative quasi-contractual arrangements that existed before prostitution was decriminalised. Most people in prostitution (both indoor and street) continued to mistrust police. They did not report violence or crimes against them to the police.

Prostitution is legal in some Australian provinces. The Australian Occupational and Safety Codes (OSC) recommend classes in hostage negotiation skills for those in legal prostitution, reflecting johns' violence.

Trafficking is most prevalent wherever prostitution is legal or decriminalised. When prostitution is legal, pimps operate with impunity and johns are welcomed. Trafficking of children has increased in New Zealand since decriminalisation, especially the trafficking of ethnic minority Maori children.

Reflecting increased organised crime since decriminalisation, Auckland gangs have waged turf wars over control of prostitution. Under legalised and decriminalisation regimes, abuse suffered by the women is now considered an “occupational hazard”, like a stone dropped on a builder’s toe.

Sabrina Valisce, who volunteered with the NZPC over a 25-year period campaigned alongside her colleagues for blanket decriminalisation, but now regrets doing so. She states: “I thought it would give more power and rights to the women,” she told me, “but I soon realised the opposite was true.” According to Valisce, decriminalisation benefitted the punters and brothel owners rather than those selling sex within them. She says: “Brothel owners could choose their prices, they say all-inclusive [which means the punter can have sex with the woman he has paid for as many times as he wishes],” says Valisce. “So clients would go into the room, see a girl and she would have to deal with them wanting to do anything and everything.”¹⁷

¹⁶ MELISSA FARLEY, *The real harms of prostitution*; WWW.PROSTITUTIONRESEARCH.COM

¹⁷ Julie Bindel, This is what really happens when prostitution is decriminalised, The Independent, Saturday 5 August 2017, at: <https://www.independent.co.uk/voices/prostitution-decriminalisation-new-zealand-holland-abuse-harm-commercialisation-a7878586.html>

In relation to: Whether the Bill has sufficient regard to the institution of Parliament

As noted in Dr Caroline Norma's Submission, which I commend to you: the Bill deregulates the commercial activities of sex industry entrepreneurs in the Northern Territory, and the *Sex Industry Bill* mostly protects the interests of sex industry entrepreneurs and their sex-buying customers in the Northern Territory.

This proposed 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 and so forth.

The Bill does not require brothel owners to enact any measures to enhance the safety of prostituted people, and supports sex-buying customers to bring civil claims against people prostituted in the Northern Territory sex industry. 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.

Within a Bill that deals with a transient and international workforce, there is 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 protects criminal sex industry entrepreneurs from interference from police, and 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'*.

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. Biekie gang and other organised crime groups are now heavily involved in the NSW sex industry.

In NSW, a police officer who investigates sex trafficking commented on the effects of decriminalisation, stating: *'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'*.

The Bill proposes to destroy records generated under the Northern Territory's 1992 legislation. This is a failing of the requirement for government officials and businesses to retain official commercial records at a minimum of seven years.

The Bill makes no special provision for Aboriginal women and girls, which, as noted above, is required in the Northern Territory, given their vulnerability and status.

The Bill misunderstands the commercial circumstances of the sex industry. A 2015 Australian Institute of Criminology report, for example, described sex worker 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.

Sex industry owners and managers upon insisting that the women working for them are 'independent contractors' deny their responsibilities to take care of those working for them as their employers under Australia's national employment laws.

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 their 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.

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 impunity to expand its business operations, including criminal conduct that may well go un-investigated and unpunished.

Concluding Remarks

Gender equality - in all its forms is a serious matter for our communities. Human trafficking, sexual exploitation and slavery are the most heinous crimes known to man - violating every part of a human person, taking away all of their dignity and rights.

The international and national communities are seeking ways to strengthen their human rights gender equal frameworks every day, including in commercial transactions.

If the Northern Territory Parliament is out of step with these measures, it is not only at an economic, social, human rights and national security threat, whereby criminality is able to thrive with impunity, but it remains and becomes more incompatible with legal and policy principles, norms and standards.

This will be to the detriment of all Australians.

I would request an opportunity to give evidence to the Inquiry.

If I can be provided with the areas the committee wishes to examine more fully from this submission, I can ensure the correct response is made.

With thanks for your consideration of the above,


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