

Submission to:
NT Sex Industry Bill 2019

AUSTRALIAN CHRISTIAN LOBBY

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Dear Dr Buckley,

Thank you for the opportunity to make a submission to this very important inquiry. Please feel free to contact me if I can be of further assistance in the consideration of this matter. I would be pleased to meet to discuss my submission or any other aspect in respect to this review. I would also request an opportunity to present to the inquiry.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'W Francis', written in a cursive style.

Wendy Francis
Director | QLD & NT

Introduction

The Sex Industry Bill 2019 is completely inadequate as a piece of proposed legislation for regulating the sex industry. It particularly fails to introduce safeguards against issues which are particularly prevalent in the Northern Territory. The effects of this legislation, if enacted, is to remove any restrictions around prostitution. It places no obligation on the sex industry to protect the most vulnerable and provides a haven for those who seek to benefit from the exploitation of women.

In April this year, the NT Attorney-General's Department invited responses to the discussion paper: *Reforming the Regulation of the Sex Industry in the Northern Territory*. That paper asked many questions concerning the regulation of the sex industry, but it seems that those issues raised in that paper have not at all been addressed in the proposed Sex Industry Bill. These included issues about safety for workers, regulation of brothels, health issues and brothel specific regulation, amongst others. The only specific concerns are with children in prostitution and the supply of drugs.

Deregulation of sex industry

The resulting proposed legislation ignores all those issues and presents not only a decriminalisation of prostitution but a complete deregulation of the sex industry. Such a hands-off approach by government leaves the path wide open for crime and exploitation.

Government has an obligation to protect the vulnerable. It is not a revelation to observe that *'If prostitution is a free choice, why are the women with the fewest choices the ones most often found doing it?'*¹ The Northern Territory has a unique demographic where almost one third of the population are Aboriginal Australians. There are many serious concerns about the sexual abuse of Aboriginal women and girls, and often those who have been sexually abused are in fact more likely to enter prostitution due to factors of guilt, shame and low self-esteem. There has been much written about the plight of homeless aboriginal women around Darwin who engage in transactional sex for survival. These women are homeless in more than one way – they are also removed from country and often alienated from their communities because of the predicament of prostitution. There is nothing in this proposed legislation to protect the most vulnerable. Any genuine commitment would implement programs for training women for more dignified 'work' rather than selling the only commodity they possess.

¹ Mackinnon, C. "Prostitution and Civil Rights" Michigan Journal of Gender and Law" 1:13-30. P.27
Australian Christian Lobby

Compatibility with Human Rights?

The 'Statement of Compatibility of Human Rights' is misleading

It is difficult to comprehend how the proposed Bill will protect vulnerable women by offering "protection and normalisation to the sex industry". Many women are in the sex industry, not because of choice, but due to absence of genuine choice. Why is it that it is *'the women with the fewest choices the ones most often found doing it?'*² Decriminalization, as proposed by the Bill, locks women into limited choice, rather than giving them a mechanism for moving out of the industry.

The primary problem in prostitution is not the (predominantly) women who sell sex, but the (predominantly) men who buy it. Rather than criminalizing the seller, a better solution which is growing in worldwide acceptance, is to decriminalize the selling of sex, but criminalize the buying of it. The effect of this is to move away from a perpetuation of what has been a patriarchal attitude to women, and instead admit that it is sexual predation on women by some males that needs to be addressed.

Criminalising sex-buyers and pimps while decriminalising prostituted people is one way of giving sex-workers control over their conditions of employment. The "sex workers" will operate wholly within the law, because they will attract no penalty whatsoever for the activity. This then gives them protection as they have the power to report buyers to police.

Consent is not always free

The Statement draws on a limited understanding of the dynamics which draw women into prostitution. For many women working in prostitution, consent is not consent. There are many situations, including physical and psychological threats, which prevent women from overtly objecting to prostitution.

All sex workers are vulnerable to exploitation and the current social narratives discourage sex workers from acknowledging their situation in a manner that can only be called bullying. Rachel Moran, feminist and former prostitute makes the following disturbing observation:

*'Sex work' ideology shields women currently in prostitution from accepting the reality of their situation; it gives men full licence to use them and it lies to society about the reality for both parties. It legitimises the sexual subordination of women in society ... it also funnels those already vulnerable to prostitution straight into it by reframing prostitution so as to gloss over its damage and degradation and by agitating for the wholesale decriminalisation of sexual and financial exploiters such as brothel keepers, punters and pimps.*³

She poignantly describes the paradox she lived as a prostitute, unable to voice the truth while being unable to deny the reality she was living:

*We could hide from the truth, most obviously, by not telling it to each other. But, conversely, we would inadvertently acknowledge it regularly by showing it to each other. It is important to clarify we never lied to each other about prostitution, but the truths we shared stopped short of utterly candid declarations about our desires to escape it.*⁴

This is a distressing reality for many women in the so-called 'industry'. Public health and wellbeing policy should not ignore such situations but seek to assist in providing solutions.

² Ibid.

³ Moran, Rachel; "The Dangerous Denialism of 'Sex Work' Ideology" in *ibid* pp.26-7

⁴ *ibid* p.26

One of the common arguments for regulating prostitution is to make it come under Health and Safety legislation so that it is safer for the women. However, this approach fails to consider that the punters are themselves the source of harm.⁵

In light of the above comments, it is disingenuous to suggest that the proposed Bill somehow safeguards against slavery and forced labour referred to in Article 8 of the International Covenant on Civil and Political Rights.

Legalising and extending the exploitation of women does not make it OK.

Nor does the proposed Bill support the Right to Work as outlined in Articles 6,7 and 8 (International Covenant on Economic, Cultural and Social Rights - ICECSR). In recommending that the State adopt measures that reduce workers operating outside the formal economy, the Bill expands the parameters of the 'formal economy' with little regard to how that impacts on the wellbeing of the workers. It is tantamount to abolishing slavery by making it legal. Sex work is not unsafe for women because it is 'informal or unregulated' but because it is exploitative and commodifies them as something that can be purchased. Again, to suggest that it is the 'informal' aspect of the economy that makes it dangerous is fallacious. For example, if a tradesman is paid in cash and by-passes the tax man, that model of service may be undesirable but it is not 'dangerous'.

Adopting and providing 'safe sex practices and a healthy work environment for sex workers' does little to promote their physical and psychological wellbeing. A more helpful measure would be to decriminalize the selling of sex and implementing options for re-training into other occupations.

The most vulnerable women in the Territory are Aboriginal women and girls. If the proposed Bill were to take its obligations to the ICECSR seriously, it would address the problems faced by Aboriginal women who engage in transactional sex as a means of survival. Many of these women have been alienated from their homes on country and resort to transactional sex in and around Darwin. The proposed Bill would make their activity legal if they got together and established a brothel. Their activity might become legal but their cultural and social rights are ignored.

The Statement notes that Article 6 of Convention on the Elimination of all Forms of Discrimination Against Women does require member states to reduce the exploitation of women in prostitution. The proposed means of decriminalising the activities of the sex industry in fact expands, rather than reduces the exploitation of women in prostitution by giving the sex industry free reign to expand its business operations. Brothels are currently banned in the Territory. The proposed 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.

Protecting women from criminal elements

There is no evidence that legalizing prostitution or brothels reduces the presence of crime. Trafficking and illegal brothels continue to ply their trade even in jurisdictions where prostitution has been decriminalized, such as the ACT,⁶ Sydney,⁷ and in respectable Melbourne suburbs.⁸ Some of these illegal brothels are run by people with respectable jobs.⁹

⁵ <https://nordicmodelnow.org/myths-about-prostitution/myth-regulation-makes-prostitution-safe/>

⁶ <https://www.abc.net.au/news/2019-01-10/police-target-illegal-brothels-in-canberra/10639738>

<https://www.canberratimes.com.au/story/6011897/two-arrested-in-relation-to-illegal-brothels-in-reid-apartment-complex/>

⁷ <https://www.smh.com.au/national/nsw/illegal-brothel-complaints-skyrocket-after-nsw-governments-refusal-to-reform-sex-industry-20170428-gvv0vn.html>

⁸ <https://twitter.com/theheraldsun/status/1153148928591912965?lang=en>

⁹ <https://www.canberratimes.com.au/story/5997060/ex-comcar-driver-given-good-behaviour-order-over-illegal-brothel/>

Criminal elements have always run businesses which have vestiges of legality or respectability. It appears that various bikie gangs are preparing to cash in on the imminent decriminalization of prostitution in South Australia.¹⁰ They already have interests in 'legal' brothels in other jurisdictions.¹¹ Decriminalisation only makes the work of identifying and prosecuting illegal activity harder.

Not compatible with Human Rights

The proposed Bill is not compatible with Human Rights. In legalising brothels it is in direct contravention to Article 6 of the CEAFDAW in that it allows for the increase in prostitution activity. It fails to provide any means for women who wish to leave the industry to do so safely.

The Bill provide little 'practical regulation' – in fact, it removes regulation.

Prostitution is not a business like any other

Legislation around health and safety needs to be tailored to encompass workplace risk, which naturally differs from one industry to another. Women engaged in the sex industry require greater protection commensurate with the greater risk – and the potential for long-term adverse consequences of the workplace-related risk – to which they are exposed. The ACL supports the wish to protect women engaged in sex work, but refutes the argument that such protection can be achieved while exploitation continues. The ability of sex workers to refuse service without penalty is obviously something the ACL would support but even this provision underscores the fact that sex work is acknowledged to differ, by its very nature, from other types of work.

Local Councils need to have the power to represent the interests of local residents in deciding whether brothels are given planning permission and what conditions are attached to their operation and advertising.

Sex work and contracts

It is not clear how the idea of contracts will apply to sex work. As the Bill proposes to "legalise contracts relating to sex work," would this represent state-enforcement of arrangements of sexual indenture? The usual nature of "contracts relating to sex work" wholly involve advance credit payments to "sex workers" who are contractually required to work in prostitution venues to repay loaned monies. This is the usual situation of trafficked women. Is it envisioned that brothel-owners will 'contract' women into some sort of sexual servitude? The practice elsewhere is that sex workers in brothels operate as 'independent contractors.'

It appears, perhaps, that the Bill does not refer only to the arrangement between the sex worker and the sex-buyer as a 'contract' in the way in which one might 'contract' to buy a washing machine, but that it also allows for a third party – employer? pimp? – to contract on behalf of the sex worker and the sex buyer. It is

¹⁰ <https://thewest.com.au/news/crime/bikie-gangs-preparing-for-the-decriminalisation-of-sex-industry-ng-88ff370da1b69df56169492dcef6bd24>

¹¹ [https://www.abc.net.au/news/2017-04-06/bikie-brothel-owners-awarded-\\$500k-after-fire-insurance-claim/8421782](https://www.abc.net.au/news/2017-04-06/bikie-brothel-owners-awarded-$500k-after-fire-insurance-claim/8421782)

here that some anomalies emerge when considering that the Bill allows the sex worker to 'refuse service' while also allowing civil claims for not fulfilling contracts.

Right to refuse

Prostitution is not like any other business and this is recognised by the Bill which advocates for the ability of prostituted women to decline particular customers without penalty. In what other industry is the provision of a publicly-available service able to be declined with such disregard for the personal attributes of the customer? The need for this provision implicitly acknowledges the deeply personal nature of the services provided.

The ability of the Northern Territory government to ensure prostituted women suffer no "penalty" for such a refusal is illusory. It is not clear if what the Bill intends is that prostitutes will be protected from civil penalties, for example, where a rejected client is not able to pursue a civil claim of discrimination?

Civil claims for not fulfilling contracts

Understandably, if the client assaults the worker, then the client, as the perpetrator, has no recourse to compensation and could be charged for assault. However, it is not clear what will occur if the sex worker refuses a client for other reasons.

The Bill upholds the client's right to compensation – to recover damages for a contract for sex work that is not performed. But such damages are possibly not recovered from the sex worker. It is somewhat doubtful that the brothel owner would be prepared to pay compensation as the sex worker is the party that does not provide the service to the client.

So just who is it that can bring civil claims against people who decline to fulfil terms of contracts for prostitution? It seems that pimps have a right to arrange binding contracts between clients and the sex worker. Or so the explanatory memorandum suggests:

Likewise, if the worker is an employee, that worker would not be liable to reimburse an employer (operator) if that employer were obliged to pay compensation because the worker refused to provide the services agreed to between the employer and the client.

What is the 'employer', if not a pimp? If the sex worker refuses to provide sex services to a client contracted by the employer, do both the pimp and the client have a right to compensation? The Bill implies state support for the rights of pimps in Australian contract law and is an inappropriate extension of government influence to the judiciary. It is for the Australian courts to determine whether or not prostitution contracts will be legally enforced, not for government to pre-empt such decisions.

The Bill further maintains that the employer is vicariously responsible for the actions of the sex worker. If the worker refuses certain acts or clients, will the employer be able to insure against such actions?

Given these ambiguities, what, if anything, does the right to refuse service mean?

Minimal regulation favours brothel owners

The Bill legalises brothels which in itself will expand the prostitution business in the Northern Territory, and in doing so places very few obligations on brothel owners. They are simply required to not employ children or supply drugs.

The following is of serious concern to the community

- There are no obligations on brothel owners to enact any measures (such as security guards) to ensure the safety of prostituted people. It is not the role of the brothel owner to enforce condom use, or display signs against trafficking.
- There are no restrictions on the location of brothels - in residential areas, near schools, parks or other public amenities
- There are no restrictions on the size of the brothel, the number of rooms or the number of women on the site.
- There are no regulations on who can own brothels. Do they need a clean police record? Do they need to be Australian residents? Australian citizens? Can they be owned by non-residents? How will this prevent brothels from contributing to sex trafficking?
- By preventing police from policing brothels, there are no mechanisms for ensuring the safety of the prostituted persons on any brothel premises. There are no mechanisms for government to check on the wellbeing of women living in brothels, or to check whether they are free to come and go from the premises.
- There is no ruling on the intellectual capacity, or the mental wellbeing, of prostituted people.
- There are no protections for Aboriginal women and girls.

Reduced police powers

Not only does the Bill not provide any mechanism for monitoring the way in which brothels are managed, but it interferes with existing powers of police, to specifically exclude their 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

A policeman may investigate a restaurant with regard to the appropriate employment of immigrant workers, but not a brothel.

Deregulation not just decriminalisation

It seems that not only will the Bill decriminalise prostitution, but it will exempt brothel owners from normal policing and monitoring. This is highly irresponsible, especially 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 know about the sex industry.

Consent in sex work is contested

The Bill clearly signals the importance and essential nature of consent by acknowledging that a woman may refuse or withdraw from offering a sexual service. However, consent is not always clear. This very point divides women. The complexities are discussed by Catherine Holmes and Eva McRae-Williams in their work 'Captains' and 'Selly-welly': Indigenous Women and the Role of Transactional Sex in Homelessness.¹²

Holmes and McRae-Williams discuss the role of consent in relation to prostitution. Pro-sex advocates argue that consent is important and that sex workers, as adult women with agency, can, and do, make informed choices concerning their sexual exchanges. But it is often the case that choice is not free when a vulnerable person resorts to prostitution from a position of powerlessness in society. Holmes and McRae-Williams explain that abolitionists, on the other hand reject that the majority of women in prostitution have choice and point to the factors affecting the decisions around participation in the exchange as discrediting any notion of consent within a framework of social justice and equality.

They conclude that

Consent is complicated, as highlighted by Vanwesenbeeck, who notes that on one end of the spectrum there is forced prostitution with a clear victim, and on the other end, there is voluntary prostitution where consent remains contested ground.¹³

In their literature survey, Holmes and McRae-Williams point out that some abolitionists are critical of the inadequate examination of consent and the underlying hidden power structures that place women in unequal or coercive positions within the pro-sex work discourse (Ferguson, 1984; Bernstein, 1999). The evidence supplied by sex workers and activists who say that choice can operate within the institution of sex work (for example see, Almodovar, 1993; French & Lee, 1988) has been criticised as stemming from a privileged minority, and thus for being a biased and unrepresentative voice:

It is not entirely clear how representative their voices are, or if other prostitutes, particularly those in the lower end of the industry, share their perspective or how they envision their work at all (Bernstein, 1999; p.92).

'If prostitution is a free choice, why are the women with the fewest choices the ones most often found doing it?'¹⁴ Mackinnon contends that where poverty has been a coercive factor in entering prostitution, for the majority it is impossible to exit into another career.¹⁵

¹² Holmes, C and McRae-Williams *Captains' and 'Selly-welly': Indigenous Women and the Role of Transactional Sex in Homelessness*, Batchelor Institute of Indigenous Education, Research teaching and Learning division, December 2012 http://eprints.batchelor.edu.au/297/1/Homelessness_Report_v2_1_Print.pdf

¹³ Vanwesenbeeck, I. Another Decade of Social Scientific Work on Sex work: A Review of Research 1990-2000. *Annual Review of Sex Research* 12: 242-289. As quoted in Holmes and McRae-Williams

¹⁴ Mackinnon, C. "Prostitution and Civil Rights" *Michigan Journal of Gender and Law* 1:13-30. P.27

¹⁵ Op.cit Holmes and McRae-Williams
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Aboriginal women and girls

Bill neglects Aboriginal Women

Nowhere does the Bill address the issues which face Aboriginal women and girls in the area of sex abuse and their recourse to transactional sex, which some identify as prostitution.

The Aboriginal woman, aged about 40, attractive with an easy smile, explains how it was for her when she lived on the streets of Darwin for six years, until she entered public housing last year: she traded sex with white men ... The woman says she considered herself a prostitute. The woman's sister, aged 45, did too.¹⁶

Holmes and McRae-Williams summarise this history:

The history of the Territory is marred with accounts of Aboriginal women being violently raped and abused. Farley and Lynne (2004), in their study of the colonisation and sexual exploitation of Indigenous women in Canada, point out that although it is infrequently analysed as such 'prostitution is the colonization of women, generally....It is also one specific legacy of colonization' (p.111). McGrath (1984) presents strong evidence that depicts the violence and coercion that were tolerated by Aboriginal men when they refused to give their women up to prostitution. The women had been typecast as whores, and she noted that 'no white man was charged for raping an Aboriginal woman and it was not an offence specified under the Aboriginal Ordinance' (p.269).

Deborah Bird Rose (1992) observed that as Aboriginal people lost access to their resources for survival, few had little choice but to turn to what she has referred to as the 'economy of sex'. Frances (1994) stated that:

... Aboriginal women's sexuality was often the only saleable item possessed by the survivors who eked out a precarious existence on the edges of white society. In the north, the labour of young men was also valued, but here the almost total absence of white women placed Aboriginal women in even greater demand (p.31).¹⁷

The research findings point to the deep and complex social, cultural and economic issues faced by Indigenous communities in the NT. Homelessness and transactional sex are largely products of these circumstances. As such, policies which specifically respond to Indigenous women, to improve their social and economic status over time, will reduce homelessness and the need for women to engage in sexual transactions.¹⁸

Exploitation of Aboriginal women begins in childhood

Nowhere are the issues of consent and lack of privilege more evident than in the lives of Aboriginal women and girls. Often there are confronting stories reported in the media such as this one reported on the creative spirits website:

¹⁶ <https://www.news.com.au/national/paul-toohey-darwin/news-story/9d05c8824501106d8e4423128d243afd>

¹⁷ Op cit Holmes and McRae-Williams p.17

¹⁸ Op cit Holmes and McRae-Williams p.41

In several states, the Australian Crime Commission has found, truck drivers buy sex from Aboriginal girls under 16 years of age (the legal minimum age of consensual sex). 12-year-old girls use contraceptive implants, children as young as seven experiment with sex toys and children trade sex to sniff petrol or for food.¹⁹

The Sex Industry Bill will facilitate the legitimising of sexual exploitation of indigenous women rather than provide a means for enabling these women to escape the oppression which has become a way of life from their teenage years.

Children and prostitution

The Bill provides penalties against prostituting children, but it also implies that in some respects the onus is on the child itself “with the level of culpability determined by the capacity of the child to appreciate the situation and the circumstances surrounding the child’s involvement.”

It is conceivable that a child might attempt to pass themselves off as older in order to engage in prostitution. Such a scenario is indeed possible when looking at the case of young aboriginal girls engaging in transactional sex. The responsibility is always with the adults who take advantage of these situations. It is not difficult to obtain age verification documents.

There are far too many vulnerable children whose past abuse makes them easy prey for abusers – whether the abusers are criminals or ‘legal’ brothel owners.

About Australian Christian Lobby

Australian Christian Lobby’s vision is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With more than 170,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

[acl.org.au](https://www.acl.org.au)

¹⁹ Korff, J 2019, *Aboriginal communities are breaking down*, <https://www.creativespirits.info/aboriginalculture/people/aboriginal-communities-are-breaking-down> retrieved 29 September 2019