



Commonwealth Modern Slavery Bill 2018 submission

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
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**3 August 2018**

Dear Secretary,

**Modern Slavery Bill 2018: Comment on provisions**

Collective Shout: for a world free of sexploitation ([www.collectiveshout.org](http://www.collectiveshout.org)) is grateful for this opportunity to comment on provisions of the *Modern Slavery Bill* 2018. We commend the Australian Commonwealth Government's strong stance against all forms of slavery, and its drafting of legislation that accounts for both the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as well as the *Convention* on the Elimination of all Forms of Discrimination Against Women (*CEDAW*). As the Committee will know, both these instruments contain provisions against prostitution as a form of trafficking.

The Bill in its current form, however, fails to recognise that the vast majority of enslaved people in the world today are women trafficked in the global sex industry for trading for prostitution. In the United Nation's Report of the Special Rapporteur on trafficking in Australia in 2011, main findings identify the various forms of trafficking in persons in Australia. These include, but are not limited to, trafficking for sexual exploitation, domestic servitude, forced labour and early and forced marriage. Identified victims of trafficking are mainly women from South-East Asia. In the majority of Australian Federal Police (AFP) investigations of trafficking-related offences, victims were found in the sex industry, yet hardly any prosecutions have been upheld over this time.<sup>1</sup> As the Committee acknowledges, a large proportion of these victims are in the Asian region, obviously where Australia is located. However, little provision is made in the proposed legislation to address Australian male demand for the sexual trafficking of Asian women as a driver of modern slavery in our region. We urge greater recognition of prostitution as a driver of modern slavery in re-drafted provisions of the Bill which should more accurately reflect the global reality of modern slavery as anchored in the sexual exploitation of women and girls. Furthermore, we call on the government to include provisions for representation and protection for victims. The draft Bill fails to recognise the complexities of modern slavery in Australia or the experiences of survivors.

We would welcome further discussion about this submission, or the opportunity to speak with Committee members.

Yours sincerely,

Dr Caroline Norma

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<sup>1</sup>United Nations Human Rights Council (UN Human Rights Council), Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Mission to Australia, 18 May 2012, p. 4



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### Prostitution: Normalised and pervasive modern sexual slavery

The European Parliament in 2014 passed a resolution pronouncing ‘prostitution and forced prostitution...forms of slavery incompatible with human dignity and fundamental human rights’.<sup>2</sup> Reports of the European Parliament describe, conservatively, a 21 million-person trade where ‘[s]exual exploitation is the main purpose...both globally and in Europe’, and in which, in the European Union, ‘figures for sexual exploitation...represent...69% of victims (95%...women and girls)’ (Voronova & Radjenovic, 2016, p. 10).

This recognition of modern slavery as anchored in the sexual exploitation of women and girls is not, however, well reflected in the draft provisions of Australia’s *Modern Slavery Bill*. Collective Shout believes that the omission is significant and should be rectified if Australia’s laws are to reflect the nation’s commitments to international law.

There is little evidence to suggest Australia’s sex industry is much different from those of countries in Europe. In other words, just like those countries, women in prostitution in Australia are disproportionately foreign-born, non-English speaking, and live without permanent visa status in the country. These circumstances render women in the industry vulnerable to modern enslavement, and there have been numerous instances of the trafficking and murder of foreign women brought to Australia for prostitution. For example:

- A Thai woman ‘SK’ was raped and sexually enslaved in a Braddon (ACT) apartment in 2007.
- In March 2008, three people were arrested in Sydney for sexually enslaving 10 Korean women.
- In December 2008, a Korean woman thought to have been involved in Sydney’s sex industry was found dead in an apartment (Ramachandran, 2008).
- In 2009, ‘six young women were enslaved to work up to 20 hours a day in the Diamonds brothel in Willoughby and ordered...to perform unusual sex acts against their will so they could pay “debts” to the madam. [The madam] recruited the women from Malaysia and arranged for them to arrive on student visas, telling them they had to pay a \$5000 debt for their enrolment in education courses, airfares and visas’.<sup>3</sup>
- A formerly prostituted woman (from Thailand) in 2012 was convicted of a slavery offence (while the man she was connected to, who raped the victim soon after arriving in Australia, was not tried on any trafficking-related charge).<sup>4</sup>
- Chinese national Ting Fang was murdered by a prostitution buyer in an Adelaide hotel in 2015 after travelling from Sydney. She was likely beforehand trafficked around Australia’s cities.

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<sup>2</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0162&language=EN&ring=A7-2014-0071>

<sup>3</sup> Paul Bibby, Stephanie Gardiner, ‘Madam convicted of enslaving students at north shore brothel,’ *The Sydney Morning Herald*, 3 April 2013, p. 5; <http://www.smh.com.au/nsw/jail-for-brothel-keeper-who-enslaved-women-20130705-2phgf.html>

<sup>4</sup> <http://www.canberratimes.com.au/act-news/how-this-sex-ledger-helped-convict-act-brothel-madam-of-slavery-20120411-1wshh.html>



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Despite ongoing problems in Australia relating to the trading of, particularly, foreign-born Asian women for prostitution, the country's government, according to the US Department of State's 2018 *Trafficking in Persons Report*, 'did not make efforts to reduce the demand for commercial sex acts'.<sup>5</sup> This was in spite of the fact that, as the *Report* continues,

[s]ome foreign women—and sometimes girls—are held in captivity, subjected to physical and sexual violence and intimidation, manipulated through illegal drugs, obliged to pay off unexpected or inflated debts to traffickers, or otherwise deceived about working arrangements [in Australia]. Traffickers attempt to evade authorities by allowing victims to carry their passports while in brothels and frequently move them to different locations to prevent victims from establishing relationships with civil society or other victims.<sup>6</sup>

The proposed *Modern Slavery Bill* does not adequately comprehend this reality of modern slavery as a commercial activity centred on the global sex industry and its entrepreneurs in Australia. The failure of the Bill's provisions to mention commercial sexual exploitation as a recognised hot-spot of modern slavery, and to enact special provision against Australian businesses that promote, participate in, or oversee activities relating to the sex industry, renders it legally ineffective against a major form of human servitude, and, in fact, the form of servitude that arguably establishes a blueprint for all other forms of slavery.<sup>7</sup>

#### Prostitution as the business of modern slavery

The Bill as currently drafted does not make provision for businesses whose primary commercial activities promote trafficking in persons. Sex tour operators to third-world destinations,<sup>8</sup> 'web-cam' pornography online traders, and so-called mail-order-bride businesses are examples of commercial activities centred on making money out of modern slavery. While Collective Shout of course supports the aim of the Bill in removing human servitude from the supply chains of mainstream Australian businesses, the Bill overlooks those businesses in Australia that derive profits precisely from the organisation of women and children in systems of human servitude.

Some of these businesses are substantial. For example, Perth-based pornography and brothel business owner [redacted] is a multi-millionaire with an ASX-listed business. The [redacted] brothel used to be a listed business in Australia, and brothels like [redacted] in Sydney are major enterprises turning over millions of dollars. Sex tour operators offering to arrange the travel of Australian men to prostitution districts in poor countries abroad is a further example of a business whose profits are precisely dependent on the enslavement of women and children, as are online customer 'review' businesses like Punter Planet that generate advertising revenue through promoting consumer patronage of the sex industry and therefore the trafficking of women into it.

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<sup>5</sup> US Department of State, *Trafficking in Persons Report*, 2018, p. 81.

<sup>6</sup> US Department of State, *Trafficking in Persons Report*, 2018, p. 81.

<sup>7</sup> See <http://prostitutionresearch.com/wp-content/uploads/2016/07/Slavery-Prostitution-Farley-2015.pdf>

<sup>8</sup> <https://www.news.com.au/lifestyle/relationships/sex/australian-sex-tourists-taking-advantage-of-young-women-in-the-philippines/news-story/25b14f28af62977fbd7b1b61b3f50473>



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As they currently stand, the Bill's provisions do not allow for the monitoring of businesses operating on the basis of profits that are high-risk in terms of their likely link to the prostitution of women, including in pornography. Major telecommunications companies in Australia derive significant revenue from pornography advertisements and trading via their platforms, but the *Modern Slavery* bill as it is currently drafted fails to account for these mainstream commercial entities that rely in part on the sexual exploitation of women and children. In the case of some start-up internet technology and software companies, their initial capital base originally derived from online activities intimately tied up with the trafficking of women and children.

This failure to account for the part of Australia's economy that is based on modern slavery is a blind spot in the Bill's drafting that is increasingly reflecting a prominent part of the global economy, which Nils Gilman (2016) calls the new 'deviant globalization' of the twenty-first century. He suggests that dismantled trade tariffs; deregulated finance, communications and transport industries; privatised national assets; 'structural adjustment' austerity programs; intensified urbanisation; lowered taxes; deepening wealth inequality (particularly between women and men); weakened border controls; predatory transnational corporate activity; and technological developments in communications and transport have set the stage for the corruption and weakened rule of law that involves

entrepreneurs...arbitraging pre-existing differences in law enforcement or moral attitudes; that is, identifying goods or services that are illicit (and therefore highly valued) in one locale, and producing or procuring them in another locale where the moral attitudes and legal enforcements against such goods or services are more relaxed or limited. Moreover, once these entrepreneurs develop a secure channel for moving one sort of illicit good, they often diversify into trading other kinds of illicit goods, creating global networks. They use the profits they earn from these businesses to gain control over legitimate businesses (para. 9).

There are examples of enterprises in Australia that have now gained 'control over legitimate businesses', but which originally profited from online pornography businesses. These businesses trade footage that mostly involves the sexual exploitation of people caught up in the sex industry under unknown and questionable circumstances. The US government recently outlawed prostitution advertisements posted via online trading websites like Backpage that facilitate the trafficking of children through classified advertisements (i.e., the *Stop Enabling Sex Traffickers Act* of 2017), and the UK is currently considering a similar policy. This policy is currently driving the closure of online 'escort' prostitution advertising in the United States, on the basis of the understanding that these advertisements promote human trafficking. Australia's *Modern Slavery Bill* in its current form reflects none of this contemporary awareness of 'enabling' businesses of human trafficking and focuses too narrowly on the possibility of enslaved labour producing goods and services in mainstream business 'supply chains'. The Bill's drafters appear to imagine slavery as a phenomenon of the commercial practices of supplier businesses abroad, and do not consider the role of Australian businesses at home enabling slavery through their interest in transactions involving the sexual trading of women and children, including in the form of pornography.



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### Child online sex trafficking

Australian telecommunications companies have also been criticised for not doing more to address the transnational cyber trafficking of children for sexual exploitation, through the live streaming of child abuse in the homes of users. Live child online abuse was described as a "global pandemic" in *Behind the Screen: Online Child Exploitation in Australia*,<sup>9</sup> a 2017 report on Australia's response to online child exploitation by Anti-Slavery Australia at the Faculty of Law, University of Technology Sydney. *Behind the Screens'* researchers [state](#) that, "More Australian-based offenders are regularly accessing, downloading from, or even administering vast international networks that encourage the distribution of materials." Australian-based offenders were "procurers, groomers and administrators of vast online child exploitation networks" and were driving abuse locally and in countries like the Philippines and parts of Eastern Europe. In an ABC Religion and Ethics article by Melinda Tankard Reist,<sup>10</sup> it was revealed that online viewers pay per torture of victims, many as young as 3 months old. Only one-fifth of investigations into this human rights' violation is followed through, due to Internet Service Providers (ISPs) lack of cooperation with the Australian Federal Police. ISPs are evidently more concerned about protecting the privacy of their customers than the children who are being subjected to this unspeakable abuse. Collective Shout's [submission](#) to *Provisions of the Sexual Crimes against Children and Community Protection Measures*<sup>11</sup> recognises that ISPs and Telcos - Telstra, Optus, iiNet and TPG - provide the infrastructure for the live-streaming abuse of children to be possible and need to cooperate with law enforcement authorities. Anti-Slavery Australia states there is a lack of clarity relating to the legal obligations of internet service providers - which form "part of a chain which contributes to the distribution of child pornography on the internet" - to report child exploitation material hosted on their networks. Provisions in the Criminal Code and Telecommunications Act are "vague and ineffective." The child victims of this crime must also be acknowledged as victims of modern slavery.

### Protection for victims

The draft Modern Slavery Bill excludes any provisions to protect survivors. It is imperative that our legislation is victim-centred; otherwise, it will fail to effectively respond to what is fundamentally a human rights issue. In the UN's Special Rapporteur report on her mission to Australia in 2011, she identified weaknesses that prevented Australia from realising a human rights- and victim-based approach.<sup>12</sup> On a national level, these include a legal and policy framework, including the provision for a national coordinator, identification of victims, support for survivors, special provisions for children, training and capacity building of people working on the front-line, and prevention strategies, and on an international level, appointing a human

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<sup>9</sup> <http://www.antislavery.org.au/images/behind%20the%20screen%20-%20report.pdf>

<sup>10</sup> ABC Ethics and Religion Article, Melinda Tankard Reist,

<http://www.abc.net.au/religion/articles/2017/07/06/4697504.htm> Accessed 22 July 2018

<sup>11</sup> Parliament of Australia Crimes Legislation Amendment (Sexual Crimes against Children and Community Protection Measures) Bill 2017 [Provisions] Submission 8 Collective Shout:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/SexCrimes/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/SexCrimes/Submissions)

<sup>12</sup> United Nations Human Rights Council (UN Human Rights Council), Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Mission to Australia, 18 May 2012, p 20





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trafficking ambassador and ratifying international agreements for the rights of migrant workers. The narrow focus of the Bill on businesses' reporting of supply chains excludes the majority of victims who are in Australia and offers insufficient protection for identified survivors.

Collective Shout recommends that the Committee refer to the measures in place to protect victims in the UK Modern Slavery Act 2015. Whilst not comprehensive, they do reflect a commitment to the rights of the victim. The appointment of a national commissioner to independently oversee multi-agency responses is important for ensuring that the plight of survivors is recognised. Furthermore, the human trafficking program should be accessible to victims through avenues beyond the AFP. As the Committee had been advised during the Bill's Inquiry, victims are often understandably fearful of police, and are more likely to seek help through other entities, such as an NGO or Workplace Ombudsman. In the UK, the Salvation Army currently oversees all referrals, and victims or the general public can phone a national hotline for support. Collective Shout would support a similar approach in Australia. We also recommend prioritising capacity-building for front-line professionals, such as immigration and police officials, to identify and assess victims (including those in forced detention) in a timely manner. This would also be preventative in nature, intercepting potential trafficking-related crimes, particularly that occur at boarder control.

Australia has ratified the *United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*<sup>13</sup> which outlines Australia's obligations to survivors. Under international law, the Australian Government have an obligation to provide provisions for survivors of human trafficking to claim compensation for damages suffered.<sup>14</sup> Presently, each Australian state and territory has different legislation, which is difficult in the case wherein victims have been exploited in various states / territories. Collective Shout strongly recommends that the Modern Slavery Bill includes provision for a national compensation scheme for survivors. Furthermore, we support recommendations from the UN Rapporteur's report for Australia that the reflection and recovery period for victims should be extended from 45 days to 90 days. In light of the incredible trauma and fear experienced by survivors, we believe that these women, men and children must be granted more time to respond and make decisions about their options. We would further recommend that support is provided without contingency on a victim's participation in criminal proceedings. Finally, Collective Shout would like to draw the Committee's attention to the importance of resourcing support services (such as accommodation, legal support, healthcare) to meet the needs of the victims and, if necessary, the victim's family.

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<sup>13</sup> United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18&lang=en) accessed 23<sup>rd</sup> July 2018

<sup>14</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, Article (6).