

## Submission

on the

## Criminal Law Amendment Bill 2014

to the

## Legal Affairs and Community Safety Committee

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## 1. Introduction

On 8 May 2014, the Attorney-General and Minister for Justice, the Hon Jarrod Bleijie, introduced the Criminal Law Amendment Bill 2014 into the Queensland parliament. It was said to represent "this government's ongoing commitment to **get tough on crime** in Queensland to make this state the **safest place to raise a family**."<sup>1</sup>

On the same day the bill was referred to the Legal Affairs and Community Safety Committee for consideration. Submissions on the bill are due on 6 June 2014.

This submission only addresses **clause 26 of the Bill, "Amendment of s 229G"**.

The Criminal Law Amendment Bill 2014 proposes changing section 229G(2) of the Criminal Code to increase the sentencing severity from 14 to 20 years imprisonment for the offence of procuring engagement in prostitution, where the person procured is a child or a person with an impairment of the mind.

FamilyVoice Australia is a national Christian voice – promoting true family values for the benefit of all Australians. Our vision is to see strong families at the heart of a healthy society: where marriage is honoured, human life is respected, where families can flourish, Australia's Christian heritage is valued, and fundamental freedoms are enjoyed.

We work with people from all major Christian denominations. We engage with parliamentarians of all political persuasions and are independent of all political parties. We have full-time FamilyVoice spokesmen in all state capitals.

## 2. Misdiagnosis of the problem

The proposed solution, to increase the maximum penalty under s 229G(2), misdiagnoses the underlying problem and thereby proposes an ineffective solution.

The major case that triggered this proposed amendment was *R v GD, PK, Baxter & Barnes*, involving a girl younger than 12 being kept as a sex slave by her mother in a suburban home brothel for 8 years.<sup>2</sup> The child was repeatedly exploited as a child prostitute and for producing child pornography. This has "garnered significant public attention and denouncement."<sup>3,4,5</sup>

For such a serious crime, the sentence of only 9 years imprisonment with eligibility for parole after only 4 years seems inadequate. The accused pleaded *guilty* to four of the eight primary charges and was sentenced on that basis.<sup>6</sup> The light sentence may have been the result of an agreement to plead guilty in exchange for leniency.

Had the accused pleaded *not guilty*, the question of whether the prosecution could have achieved a successful conviction on the basis of the available evidence remains open. Merely increasing the maximum penalty would have no effect unless a conviction can be obtained.

### 3. The real problem

#### *Illegal operators masquerade as sole operators*

Queensland's Crime and Misconduct Commission (CMC) in 2011 reported that:

- many illegal operators masquerade as sole operators in their advertising
- there are an increasing number of migrant sex workers and migrant organisers working in this sector.<sup>7</sup> [emphasis added]

Sole operator prostitution is legal in Queensland. These operators don't need a licence, and are not governed by any of the conditions on a brothel, such as inspections.

#### *Current laws flouted*

The Human Trafficking Working Group, at the University of Queensland's School of Law, found that:

*The spirit of the Prostitution Act 1999 (Qld), which is to draw as many of the illegal operators and workers as possible into the legal industry, has clearly failed.*

*90% of prostitution remains unregulated in this state and most sex workers continue to work outside the regulated industry.<sup>8</sup>*

Clearly the great majority of prostitutes, pimps and madams would remain unaffected by any slight modifications to the law – and so would the children caught up in this exploitative trade.

#### *Legalisation increases human trafficking*

Queensland's current approach to prostitution law is sometimes described as partial legalisation or regulation. The CMC 2004 review<sup>9</sup> of the operation of Queensland's Prostitution Act 1999 found that the current model, among other things, led to:

- implied "normalisation" of prostitution and expansion of the industry,
- increased sex-trafficking of women and
- increased child prostitution.

A UN Save the Children report found that Victoria and NSW, which have legal brothels, were the two worst States for child prostitution.<sup>10</sup>

A 2012 international study examined the effect of legalising prostitution on human trafficking and found that, while demand is reduced for trafficked women because of a preference for legal women, the overall increase in growth of the industry dominates this, with the net effect of increasing human trafficking inflows.<sup>11</sup>

#### *Legalisation increases sexual servitude*

The fact that brothels are legal is used by traffickers to help recruit women for sexual servitude. For example, a Korean pimp was reported to have used this approach:

*The broker lured the women, saying that they could work without risk, since prostitution is legal in Australia, and make big money. He introduced 25 women to brothels in Melbourne and Sydney since 2007.<sup>12</sup>*

Once the women arrive, pimps evade authorities by moving their captives from brothel to brothel and even interstate.

### **Legalisation disempowers police**

The problems associated with a legal prostitution trade have a long history, as Professor Eileen Byrne's submission to the Queensland Criminal Justice Commission Inquiry into Prostitution Laws in 1991 shows:

*In London, we found both in the 1960s and the late 1970s that only when there was a hard crackdown on brothels and other organised forms of prostitution, could we cut back the traffic in young boys and girls and help social welfare agencies to get young people aged 12-20 out of the system. **Public tolerance or a legal blind eye created increased traffic in the innocent and the vulnerable...***

*The rescue of the young is often less possible under a legalised prostitution system. Evidence not only from international committees of inquiry, but from social welfare agencies who work across European country boundaries, shows a consistent pattern in Europe of a poor history of police-welfare attitudes towards young prostitutes of under 18 who attempt to leave the system...*

***We could not have acted to close the London brothels, break the syndicate and discover and rescue the girls, without the sanction of the illegality of prostitution. We must have the law on our side.<sup>13</sup> [emphasis added]***

In March 2011 Canberra police admitted they had limited ability to investigate children working in legalised brothels.

*Canberra's prostitution laws leave police almost powerless to rescue children from sexual exploitation in brothels, according to the territory's police chief.*

*More than two years after a 17-year-old girl died of a heroin overdose in a Fyshwick brothel, police say their ability to investigate children working in legal sex venues remains limited, weak and constrained.*

*Authorities are also worried that they remain almost completely in the dark about what goes on in the city's illegal sex-for-sale operations<sup>14</sup>*

### **Implications for child exploitation**

Children are inevitably caught up in the human trafficking and exploitation association with legal prostitution. Queensland's partial legalisation and regulation of the prostitution trade leads to an expansion of the trade and an increase in the number of children caught up in it.

**Increasing the maximum penalty in section 229G(2) of the Criminal Code fails to address the underlying reason for the sexual exploitation of children.**

## 4. A better approach to prostitution law

For Queensland to be a safe place for children, one of the factors that must be addressed is to minimise the risk of children being trafficked, procured or exploited in the prostitution trade or the associated child pornography industry.

The nexus between the exploitation of children and the exploitation of women in the prostitution trade should also be recognised. Where prostitution is legalised and normalised, as under the current law in Queensland, the number of prostitutes, pimps and madams expands and the number of children caught up in this expansion also grows.

In order to reduce the exploitation of children, the objective of prostitution laws must be to minimise the whole sex trade, with its procurement, trafficking and exploitation of women and girls.

The United Nations *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, which came into force in 1951, targets the organised crime that controls this vicious trade: those who procure, traffic and exploit women and girls for the purpose of prostitution.<sup>15</sup>

More recently, in 1999 Sweden adopted a new approach to suppression of the prostitution trade, which was also adopted in Norway and Iceland a decade later and has become known as the *Nordic model*.<sup>16</sup> In addition to laws against pimping, procuring and operating a brothel, this model makes it illegal to buy sexual services but not to sell them.

Furthermore, the Swedish government developed programs for:

- *Prevention*, to reduce the risk of girls being enticed into the trade;
- *Exit*, to help prostitutes leave the trade – on the basis that the healthiest place for prostitutes is in *other* work; and
- *Client education*, to help clients (or “johns”) understand the physical and psychological damage their actions cause the prostitutes.<sup>17</sup>

While no model can completely eliminate prostitution, the Nordic model has been shown to reduce the illegal trade and help women exit it. This model has recently been adopted by the European Parliament<sup>18</sup>

## 5. Conclusion

Increasing the maximum penalty in section 229G(2) of the Criminal Code is a step in the right direction, but this change is unlikely to have any significant effect on the safety of children in Queensland. The underlying systemic flaws of the partially legalised model need to be recognised and a different model adopted, such as the Nordic model.

The model that best protects women is one that helps them move out of the trade altogether.

**Recommendation:**

***In order to minimise the risk of children being exploited through prostitution or the production of pornography, Queensland's system of partial legalisation and regulation of the prostitution trade should be replaced by the Nordic model which prohibits the purchase of sexual services as well as pimping, procuring and operating a brothel.***

## 6. Endnotes

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<sup>1</sup> Hansard, Criminal Law Amendment Bill, 8 May 2014, <http://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/140508/Criminal.pdf>

<sup>2</sup> *R v GD, PK, Baxter & Barnes*, 2013, <http://www.law.uq.edu.au/documents/humantraff/case-reports/trafficking-offences/R-GD-PK-Baxter-Barnes.pdf>

<sup>3</sup> "Man on 99 child sex charges gets bail", *The Australian*, 25 October 2011.

<sup>4</sup> Jared Owens, "Child used as sex slave for years" , *The Australian*, 28 November 2011.

<sup>5</sup> Queensland Parliament, *Criminal Law Amendment Bill 2014: Explanatory Notes*, p 2, <https://www.legislation.qld.gov.au/Bills/54PDF/2014/CriminalLawAB14E.pdf>

<sup>6</sup> Human Trafficking Working Group of the University of Queensland, Case Report (Criminal): *R v GD, PK, Baxter & Barnes*, 2013, p 3, <http://www.law.uq.edu.au/documents/humantraff/case-reports/trafficking-offences/R-GD-PK-Baxter-Barnes.pdf>

<sup>7</sup> Crime and Misconduct Commission, 'Regulating Prostitution: A follow-up review of the *Prostitution Act 1999*', 2011, p. 34

<sup>8</sup> Schloenhardt, A. et al, 'Happy Birthday Brothels: Ten Years of Prostitution Regulation in Queensland', University of Queensland TC Beirne School of Law, 2009, <http://www.law.uq.edu.au/documents/humantraff/reports-presentations/UQ-HTWG-Ten-Years-of-Prostitution-Regulation-in-Qld-Sep-2009.pdf>, p 31.

<sup>9</sup> Crime and Misconduct Commission, *Regulating Prostitution: An evaluation of the Prostitution Act 1999 (QLD)*, 2004, p 34, <http://www.cmc.qld.gov.au/research-and-publications/publications/crime/regulating-prostitution-an-evaluation-of-the-prostitution-act-1999-qld.pdf>,

<sup>10</sup> Cited by Pat Gartlan, "Legalised prostitution is a failed experiment", *The Examiner*, 15 May 2012, <http://www.examiner.com.au/story/86862/legalised-prostitution-is-a-failed-experiment/>

<sup>11</sup> S. Cho, A. Dreher and E. Neumayer, 'Does Legalized Prostitution Increase Human Trafficking?', *World Development*, Vol. 41, 2013, pp. 67–82.

<sup>12</sup> K. Young-won, "Korean pimps caught trafficking in Australia", *The Jakarta Post*, 30 Jun 2012, <http://www.thejakartapost.com/news/2012/06/30/korean-pimps-caught-trafficking-australia.html>.

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<sup>13</sup> Eileen Byrne, Professor of Education, University of Queensland, Submission to Queensland Criminal Justice Commission Inquiry into Prostitution Laws, April 1991

<sup>14</sup> "Capital's child sex workers all alone", The Canberra Times, 24 Mar 2011, <http://www.canberratimes.com.au/news/local/news/general/capitals-child-sex-workers-all-alone/2112788.aspx?storypage=0>.

<sup>15</sup> United Nations, *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, 1949, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>

<sup>16</sup> "Prostitution in Sweden", *Wikipedia*, [http://en.wikipedia.org/wiki/Prostitution\\_in\\_Sweden](http://en.wikipedia.org/wiki/Prostitution_in_Sweden)

<sup>17</sup> Crime and Misconduct Commission, *Regulating Prostitution: An evaluation of the Prostitution Act 1999 (QLD)*, 2004, <http://www.cmc.qld.gov.au/research-and-publications/publications/crime/regulating-prostitution-an-evaluation-of-the-prostitution-act-1999-qld.pdf>, p 35

<sup>18</sup> H. Osborne, "Nordic Model of Prostitution Approved by European Parliament", *International Business Times*, 26 Feb 2014, <http://www.ibtimes.co.uk/nordic-model-prostitution-approved-by-european-parliament-1438009>.