

Fondation Scelles

Connaître, Comprendre, Combattre
l'Exploitation Sexuelle

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AUSTRALIA

	POPULATION 24,5 million		GDP PER CAPITA 53,799.9 USD
	POLITICAL SYSTEM Constitutional Monarchy		HUMAN DEVELOPMENT INDEX 2 nd rank among 187 countries
	GENDER INEQUALITY INDEX 24 th rank among 147 countries		CORRUPTION PERCEPTIONS INDEX 13 th rank among 180 countries

Australia is a constitutional monarchy with a parliamentary system. There is no national legislative framework pertaining to sexual exploitation, rather a federal organization with different laws depending on States and Territories. The models defined by the legislator range from the criminalization of all forms of organization of sexual exploitation (South Australia) to its complete decriminalization (New South Wales) to different legislative frameworks criminalizing specific forms of sexual exploitation, such as street prostitution. Nevertheless, prostitution remains the focus of heated debates. The discourse on the professionalization and “secure” framework of prostitution is still prevalent in different regions of the country, at the risk of masking the reality of sexual exploitation.

Sexual exploitation and human trafficking: the illusion of freedom and equality

Although the “sex industry” is largely under the control of the authorities, it

remains difficult to obtain estimated figures relating to sexual exploitation, official or otherwise. Figures provided by civil society, similarly to the government’s, are often underestimated and do not reflect the true scope of the phenomenon as the data is often limited to a specific jurisdiction or city. A 2008 study has been the sole provider of a national estimate of prostituted persons in Australia, used by the Australian government, at the number of 20,000, although this figure probably underestimates the reality. (*Australian Institute of Criminology*, 2015).

Human trafficking victims

According to the 2018 US Department of State report on Trafficking in Persons, Australia is primarily a destination country for human trafficking victims. The reality of human trafficking for sexual exploitation purposes remains contested in the country. For the influential organizations claiming the existence of “sex work” and advocating for its decriminalization, “human trafficking

is not a widespread phenomenon in the sex industry: the preconceptions and false ideas of “sex workers” and the sex industry are at the root of the hypothesis that the majority of “sex workers” are victims of human trafficking” (Chapter 4 Sexual Servitude) (Parliament of the Commonwealth of Australia, July 2017).

Researchers estimate however that around 2,000 women every year are victims of human trafficking for sexual exploitation purposes (CATWA, April 2017). In Western Australia, close to half of all persons involved in the sex industry are thought to be of foreign origin, among whom 30% are from non-English speaking countries (*National Center in HIV Epidemiology and Clinical Research, UNSW, 2010*). Individuals originating from South-East Asian countries (particularly Thailand and Malaysia) are amongst the first victims: they represent 53% of prostituted persons in Sydney brothels (*National Centre in HIV Epidemiology and Clinical Research, UNSW, 2010*). According to multiple studies, these women arrive in Australia legally with Working Holiday Visas (WHV) or student visas, are deprived of income, and turn to prostitution (*Frontiers in Public Health, June 2018*). Numerous cases indicate that these women are in fact coerced and exploited: confiscated papers, sequestration... (*NorMAC, February 24, 2017*). Moreover, some fall victim to networks, which attract them under false pretences of employment and bring them legally to Australia. Indeed, if a business needs to fill a vacant position but cannot find a skilled person in the country, it can source one from abroad. This foreign worker will receive a Temporary Work (Skilled) visa, subclass 457 with a work permit valid for a maximum of 4 years. A 2017 investigation revealed that massage parlors were bringing in female “massage therapists” through the Working

Visa 457 in order to coerce them into prostitution. According to an anonymous source, the government had become aware of the use of these specific visas in a context of sexual exploitation (*International Business Times, April 27, 2017; News.com.au, April 27, 2017*). This type of visa has since been eliminated, and be replaced by a stricter system.

Victims of stigmatization and racism, women of Asian origin are in a state of extreme vulnerability due to their lack of proficiency in English, and the social isolation in which they live. Their traffickers or procurers try to frequently move them between establishments, sometimes even from one State to another, to prevent them from forming relationships with other victims or outsiders.

Exploitation of indigenous populations

We note an overrepresentation of the aboriginal population within the sex industry without the ability to quantify it more precisely. Aboriginal women and indigenous women from the Torres Strait are amongst the most discriminated against in the Australian population. Their life expectancy is 10 years shorter than the rest of the female population and they are more exposed to violence, particularly sexual violence.

Over the past ten years, the Australian government has been working towards closing the gap between populations (campaign “Closing the Gap”). Nevertheless, the protection of these women remains insufficient, as pointed out by the UN Committee on the Elimination of Discrimination Against Women (CEDAW) in July 2018, which recommended to the Australian government to “develop, in collaboration with indigenous women and girls, a specific national action plan on violence against indigenous women and girls” (§52, f).

Sexual exploitation of minors

According to the US Department of State, a small number of minors, predominantly Australian teenage girls and girls of foreign origin, are victims of sexual exploitation (US. Department of State, June 2017 and June 2018). The figures on this phenomenon are few and inaccurate. Yet testimonies tend to indicate that sex buyers are looking for young prostituted persons, even very young. Jacqueline Gwynne, a long-time receptionist in a legal Melbourne brothel, testifies: “The most frequently asked question by sex buyers is: “How old is the youngest?” They like them as young as possible, because it is easier to have them do things they do not want to do” (*Révolution féministe*, September 30, 2018). Incidentally, the establishment where Jacqueline Gwynne worked was closed because a 14-year old victim of prostitution was found.

A report on the implementation of the Convention of Children’s Rights, without directly mentioning forms of sexual exploitation, indicates that 13% of Australians of 18 years old and above have suffered from sexual and physical abuse before the age of 18. Girls are the most at risk: between 18% and 38% of girls have suffered sexual abuse before the age of 16 (including 4% to 12% with penetration) and between 6% and 20% of boys (including 1.4% to 7.5% with penetration) (*Australian Human Rights Commission*, November 1, 2018).

What types of prostitution?

A distinction is made between indoor and outdoor prostitution. Outdoor prostitution occurs on the streets, in parks, or even in cars. According to official sources, it represents between 10% and 20% of all prostitution activities according to the States, and is in steady decline

(National Centre in HIV Epidemiology and Clinical Research, UNSW, 2010).

Unauthorized venues and illegality in authorized venues...

Indoor prostitution is considered legal as long as it takes place in dedicated venues for these activities: brothels, showcases, private apartments and hotels. Nevertheless, we observe an increase in unauthorized prostitution venues. In Sydney, complaints regarding illegal brothels have increased by 37% in a year (*The Sydney Morning Herald*, April 30, 2017). Many prostitution establishments are concealed with signs for massage parlors, karaoke bars, nail salons... In Perth, in Western Australia, there are around forty massage parlors. In Queensland, the majority of prostitution is developing outside of the licensed sector. In 2018, there were 20 licensed brothels in Queensland, the lowest figure recorded since 2004. Licensed prostituted persons (legal), escorting agencies (illegal), and massage parlors (illegal) are replacing these establishments (*Queensland Government*, 2018). Furthermore, police operations carried out in the States of Victoria, Queensland and New South Wales have shown that some legal establishments concealed illegal activities such as: drug trafficking, and trafficking of women and children... (*Tasmanian Times*, July 11, 2018).

Prostitution on the internet

The most noteworthy change in the last of decade has been the development of online prostitution. The number of licensed prostituted persons is continuously increasing. The majority practice their activity from home and promote their services on their own websites, via social networks or advertisement platforms (Gumtree or Backpage) or even on camgirl sites (women who perform erotic acts to anonymous site visitors in front of a webcam in exchange for

money). It is suspected that a growing number of female students have been victims of prostitution on “sugar daddies” websites. Young people registering as “sugar babies” increased from 82,760 in February 2016 to 425,761 in October 2018 (*Canberra Times*, October 28, 2018). Moreover, there is an increased number of “sex tours,” a modus operandi used by procurement networks, which entails the scheduling of trips for prostituted persons in different cities. Sex buyers make an online booking and receive their confirmation through text message. These tours are often organized in mid and high-end hotels, where their occupancy and size allow for prostitution activities to go unnoticed.

Sex tourism

Sex tourism has seen a subtle decline over the past 5 years, due to the increase in unemployment and lower discretionary spending (relative to non-essential household expenses) (*News.com.au*, July 4, 2016). Nevertheless, it remains a major issue for the Australian authorities on two counts: the development of sex tourism targeting minors on Australian territory and sex tourism involving Australian nationals abroad. Australian men are indeed the main sex buyers and sex tourists in South-East Asian countries (Thailand, Philippines...) (*News.com.au*, July 22, 2015). According to the Australian NGO SnowBell Project, Australian sex buyers represent 31% of sex tourists prosecuted in Thailand, constituting the largest group of offenders. Regarding cases of sexual exploitation of minors, they are reported to be present in at least 25 countries.

To fight against child sex tourism, a law passed in December 2017 now prohibits registered child sex offenders from leaving Australian territory (*The New York Times*, December 13, 2017). Some 20,000 Australians sentenced for offences of paedophilia could see their passports

cancelled in accordance with the new law (trips for family or professional reasons may be organized with temporary passports). It is the first time a country has taken such radical measures in order to protect minors.

The leitmotiv of the decriminalization of prostitution

The legislation on prostitution varies between Australian States and Territories (*Parliament of South Australia*, May 2017). The result is a highly complex set of rules, which encompasses most forms of regimes in place throughout the world, from total decriminalization to strict criminalization, including various forms of gradual legislation.

Decriminalized prostitution

New-South Wales is the sole State to have adopted total decriminalization of prostitution: no permit or registration is required. Spaces are dedicated to street prostitution. Brothels' activities are regulated by the authorities just like any other activity.

Criminalized prostitution

In Western Australia, South Australia and Tasmania, most forms of prostitution are criminalized: brothels and street prostitution are forbidden but the practice of prostitution is authorized for independent individuals, whether they operate alone or through escorting agencies. In South Australia, laws are the strictest and prostitution is criminalized: brothels are prohibited, living on profits from prostitution is liable to a term of imprisonment of 6 months and a fine of up to 2,500 Australian dollars (AUD) (USD 1,793), solicitation is punishable by a maximum fine of AUD 750 (USD 538), sex buyers can also be liable to a fine of AUD 1,250 (USD 896) or a three-month prison sentence.

Legalized or licensed prostitution

The States of Victoria and Queensland have legalized the activity of prostitution inside brothels, yet street prostitution is prohibited: prostitution establishments and escorting agencies need to be registered or hold a license from the authorities (Business Licensing Authority). In the Australian Capital Territory (ACT), laws are more liberal: all aspects of prostitution are authorized provided they are registered. In the Northern Territory (NT), escorting agencies and persons practicing in them need to be registered with the Director General of Licensing, however street prostitution, independent prostitution and brothels are forbidden. This legal diversity is an obstacle to the efficiency of the policies, therefore international organizations are requesting Australia to harmonize the existing regimes. In July 2018, the Committee on the Elimination of Discrimination against Women (CEDAW) declared being *“preoccupied by the fact that the lack of harmonization of legislation of the States and Territories regarding the prostitution of women impedes the access of prostituted persons to health care, support services, legal aid and employment”*. Would this harmonization play in favour of decriminalization? This is a question worth asking if we examine the debates on the topic at the local level.

South Australia at the forefront of decriminalization?

Since 2015, a proposal for decriminalization of prostitution has been under review in South Australia. This project, brought forward by Michelle Lensink, a regulationist Member of Parliament, aims to *“decriminalize ‘sex work,’ to fight against discrimination towards persons who are or have been ‘sex workers,’ (...) to give ‘sex workers’ the same rights and the same protections awarded to other workers.”* In September of 2015, a parliamentary commission was formed to study the law

proposal and the potential effects of the decriminalization of prostitution. During several months, health organizations, feminist movements, police workers, and, above all, powerful “sex work” movements of such as Sex Industry Network (SIN), Sex Worker Action Group, Gaining Empowerment Rights & Recognition (SWAGGER), Scarlet Alliance, etc. were auditioned by legislators. Nevertheless, some discordant voices were heard during the investigation. Groups, such as the Australian Christian Lobby (ACL) and the Nordic Model Australia Coalition (NorMAC), highlighted the dangers associated with the decriminalization of prostitution: normalization of sexual violence, increased risk of exploitation of women and children. Yet, these arguments were not accepted and the commission’s conclusions recommended the adoption of the draft law without amendments (*Parliaments of South Australia*, May 2017). The Legislative Council adopted the draft law in July of 2017 with 13 votes against 8. The review of the text by the Legislative Assembly was planned for September of 2017. However, with both Houses of Parliament dissolved and its members reluctant to discuss this issue in the run-up to the parliamentary elections, the debate was postponed to the new legislature. In May 2018, before a new Assembly, the debate on decriminalization of prostitution was reopened and the MP Tammy Frank reintroduced the draft law on the basis of the 2015 text. The text is currently in its second reading stage, awaiting its adoption by the Upper Chamber.

Reinforced actions in the fight against human trafficking

Although it was placed in Tier 1 by the 2018 US Department of State report on Trafficking in Persons, Australia is faced with inconclusive results regarding the fight against human trafficking. The number of

victims identified remains stable and relatively low. The US Department of State indicates that 36 potential victims of human trafficking (all forms combined) were identified in 2016 and 38 in 2017. The Australian Federal Police (AFP) displays slightly higher figures but they are still limited: 169 reports of alleged human trafficking cases in 2015 and 2016, including 69 for forced marriage and 39 for sexual exploitation purposes. The majority of victims identified by the authorities until 2016 were women from Asian countries exploited in prostitution (*Walk Free Foundation, 2018*).

The number of investigations by the Australian federal police is increasing: 61 in 2015, 105 in 2016, 166 in 2017. Nevertheless, convictions remain rare: a sole conviction in 2016 (for a minor offence, not human trafficking) and 5 in 2017 (*US Department of State, June 2017 and June 2018*). In September of 2017, a Malaysian woman living in Western Australia was convicted for human trafficking offences and condemned to three years and four months imprisonment. She had organized the transfer of a “friend” who thought she was going to Australia for holiday, to Perth. Then she confiscated her passport and forced her into prostitution. It was the first time an investigation, prosecution, and conviction for human trafficking had taken place in Western Australia (*New Straits Times, November 29, 2017*).

Anti-human trafficking tools

In response to this phenomenon, Australia has acquired an array of tools for combating human trafficking. The government continues to implement the action plan as scheduled for the period 2015-2019. Furthermore, a regional cooperation program was implemented between the Asian and Australia. The Australia-Asia Program to Combat

Trafficking in Persons (AAPTIP) 2013-2018 supports the different actors in the combat against human trafficking and establishes partnerships to allow for more efficient legal proceedings of traffickers and better protection for victims. The AAPTIP operates in Cambodia, Indonesia, Laos, Burma, the Philippines, Thailand and Vietnam.

A parliamentary committee

Following the adoption of the Modern Slavery Act by the United Kingdom in 2015, Australia established a parliamentary committee to analyze the phenomenon of human trafficking, evaluate the existing laws, identify good practices and study the possibility of drafting legislation on modern slavery similar to that of the United Kingdom (*Parliament of the Commonwealth of Australia, July 2017 and December 2017*). In this context, parliamentarians organized around a hundred hearings and collected more than 200 expert and NGO testimonies. Regarding the more specific case of human trafficking for sexual exploitation purposes, the questioned organizations expressed relatively diverse opinions. Some are opposed to the very principle of a Modern Slavery Act on the model of the United Kingdom, because they do not agree with the definitions of human trafficking and sexual exploitation as they are defined in this text. On one hand, pro-“sex work” organizations criticize the lack of distinction between exploitation/trafficking and “sex work,” and are concerned that migration for the purpose of prostitution is systematically equated with trafficking. On the other hand, organizations who defend the Nordic Model also challenge the overly rigid definition of sex trafficking, which does not take into account the exploitation of women in sex trade.

In December of 2017, the Committee submitted its report with 49

recommendations, focused around a few approaches:

- establish a law in Australia on the model of the United Kingdom Modern Slavery Act to tackle the phenomenon as a whole and make it a political priority;
- rethink the definition of modern slavery and give it a precise estimate;
- create an independent commission in charge of the combat against human trafficking;
- develop support for victims (financial aid to victims, subsidies to NGOs...) and facilitate access to residence permits... ;
- improve the identification of victims and the prosecution of criminals: training courses for police workers and magistrates, coordination between actors involved...;
- further the fight against the trafficking of orphaned children in institutions;
- rethink the legal framework of visas to better combat human trafficking and more specifically, forced labor.

A law in the making

Following the publication of this report, a draft law against modern slavery (the Australian Modern Slavery Act) was submitted to the Australian Parliament in 2018 (at the same time, a draft law was adopted by the New South Wales Parliament). This legal text has been hailed by the media as a strong and positive initiative, with its proposals going further than the British model. The key measure aims to empower civil society by involving 3,000 large Australian companies in the fight against human trafficking (risk analysis of exploitation in the organization and the logistics chain, annual report on the actions taken to reduce the risks, raising awareness...). NGOs, for their part, are pleased that human trafficking is now high on Australia's political agenda. Nevertheless, for many of them, the draft law is not thorough enough as it does not consider penalties for companies that do not comply with the requirements of the law. Moreover,

protective measures for victims are insufficient. Lastly, an overall vision of the phenomenon obscures the specificities of human trafficking for sexual exploitation purposes. Thus, a law which aims to empower industries that carry potential risks of exploitation (textile...) does not take into consideration all the prostitution establishments. Besides, the issue of demand is not raised.

The Nordic Model in Australia

Yet, a number of international bodies are urging Australia to take into account the demand for human trafficking and prostitution. In 2018, the US Department of State recommended Australia to “*intensify its efforts to reduce the demand for the sex trade and forced labor*”. Also in 2018, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) issued the same request: “*In addition, the Committee is concerned that the State party has not taken measures to reduce the demand for prostitution in order to deter women and girls from entering prostitution, and to assist those who wish to leave prostitution*” (CEDAW, July 25, 2018).

Various NGO's defend the Nordic Model in Australia. Between 2016 and 2018, conferences brought together international activists and survivors of prostitution. These same NGOs appeared before parliamentary committees on the decriminalization of prostitution as well as on the current situation of human trafficking in order to improve the understanding the utility of the Nordic Model. Academics, such as Caroline Norma, and lawyers, such as Melinda Tankard Reist, have taken a public stance in defence of this model. Nevertheless, their voices are hardly heard. In a country that reasons in terms of criminalization and decriminalization, the Nordic model is viewed as a form of criminalization and for this reason, is often

dismissed or misunderstood (like the motion introduced by a branch of the Liberal Party of the State of Victoria in April 2018 which, claiming to be inspired by the Swedish law, aimed above all to punish customers of illegal brothels and not to penalize the purchase of sexual services) (*News.com.au*, April 21, 2018).

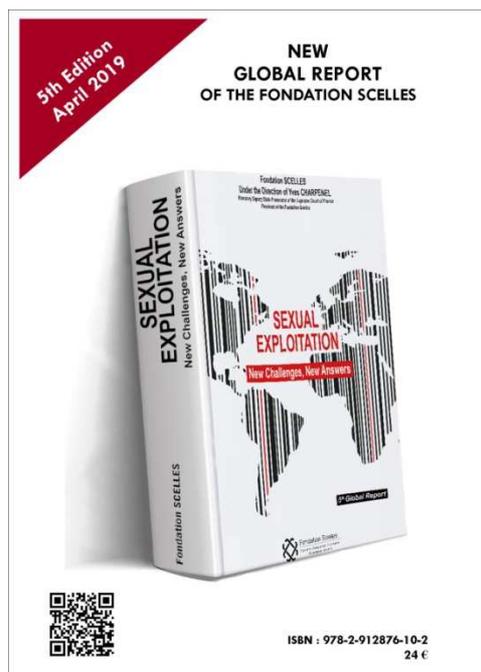
As the pressure in favour of decriminalization intensifies, the debate is becoming more radical and individuals who oppose movements in favour of decriminalization are targeted by violent attacks. The Australian Summit Against Sexual Exploitation (ASASE) held in Melbourne in 2018 was stormed by supporters of the decriminalization of prostitution (*Feminist Current*, August 7, 2018). Survivors of prostitution who share their experience in the media are victims of harassment (insults, threats, intimidation...) from these groups (*ABC.net.au*, October 12, 2016; *Dignity*, February 2017). Lastly, the activist Kathleen Maltzahn, member of the Green Party and a pillar of the abolitionist movement in Australia, officially denounced her support for the Nordic model, probably as a result of political pressure, a few weeks before the legislative elections (*Tasmanian Times*, May 20, 2018).

In conclusion, Australia is faced with a major turning point. Will it choose total decriminalization? Southern Australia seems ready to initiate this change, and other States may soon choose to follow its lead. Tasmania has attempted to develop its law on prostitution. In the State of Queensland, as well as in the State of Victoria, "sex workers" movements are lobbying in order to obtain a change in regime. Decriminalizing, nonetheless, means normalizing the violence experienced by prostituted persons, accepting the exploitation of the most vulnerable ones in society and legitimizing the racialization of bodies. Is Australia truly aware of these stakes?

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Fondation Scelles

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L'Exploitation Sexuelle

The **Fondation Jean et Jeanne Scelles**, recognized as a public utility since 1994 and as a consultative status with ECOSOC, is an independent, non-profit organization based in Paris (France) dedicated to fight the system of prostitution and the exploitation of prostituted persons, through information, analysis, advocacy, trainings, awareness initiatives and legal actions. The **Fondation Jean et Jeanne Scelles** is a co-founding member of the Coalition for the Abolition of Prostitution (CAP International) which was launched in 2013 and today brings together 28 abolitionist NGOs from 22 countries.

The **International Observatory on Sexual Exploitation** (Observatoire international de l'exploitation sexuelle) is a worldwide hub which allows for information exchange on the system of prostitution. The hub is regularly consulted by French and foreign experts including NGOs, institutions, journalists, lawyers, researchers and those involved in the defense of human rights. The goals of the **International Observatory on Sexual Exploitation** are:

- to analyze all the aspects of the phenomenon: prostitution, sex tourism, procurement, child pornography, sex buyers, human trafficking for the purpose of commercial sexual exploitation...
- to encourage reflection and to take a stand
- to inform the public who are interested in these issues

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