

Can Willing Migrant Sex Workers be Real Victims of Human Trafficking? A WPR Analysis of the Australian Modern Slavery Act Inquiry Report.

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Abstract

Using Bacchi's (2009) What's a Problem Represented to be? (WPR) methodology, this paper analyses the *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia Report* to examine the deep-seated assumptions, historical ways of thinking, and the silences used to support the contemporary construction of the problem of human trafficking in the Australian sex industry. This paper will also focus on how the Report understands migrant sex workers and their association with trafficking. In doing so, the aim is to destabilise the taken for granted knowledges and truths presented in the Report. Finally, the paper will provide alternative ways of understanding migrant sex workers and trafficking in the sex industry that may broaden all victims' access to Australia's human trafficking response, irrespective of the industry they are located in.

Keywords

Human trafficking; sex industry; migrant sex workers; WPR; post-structuralist; Australia

Introduction

Since the introduction of human trafficking legislation in 1999, the Australian Government has held a number of inquiries to examine the prevalence and characteristics of the problem of human trafficking and the effectiveness of legislative responses. Whilst previous inquiries largely focused on the sex industry, changes introduced into Australian human trafficking law in 2012 moved to de-sexualise human trafficking legislation by repealing the requirement to prove a commercial sexual element to gain a human trafficking prosecution (The Parliament of the Commonwealth of Australia, 2012). This was a landmark moment in Australian human

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trafficking law as it acknowledged that human trafficking is not unique to the sex industry and shifted national discourse away from singling out the sex industry for being directly responsible for exploitation. Additionally, the changes allowed the sex industry to be governed by the same human trafficking laws governing all industries, de-stabilising the assumption that 'sex trafficking' is fundamentally different to 'labour trafficking'.

Taking into consideration the trend for some countries to move towards human trafficking legal responses that aim to abolish the sex industry due to the view that sex work is not legitimate work and is inherently and especially exploitative, the legislative changes introduced in 2012 constructed the Australian human trafficking response as comparatively unique. However, despite these legal changes, Australian sex work workplaces continue to be disproportionately investigated for sex trafficking. Additionally, while public inquiries acknowledge that human trafficking can occur in any industry, they continue to single out the sex industry for investigation and distinguish between 'labour trafficking' and 'sex trafficking'.

As Australia presents a unique approach to human trafficking, there is a need to examine the distinct truths and knowledges that are deployed in public inquiry reports. Public inquiries have been instrumental in producing knowledge about what is considered human trafficking in the sex industry, who is impacted by the crime, and strategies to prevent and prosecute it. This paper utilises the What's the Problem Represented to be? (WPR) methodology to human trafficking in the sex industry field in order to undertake a systematic post-structural analysis of multiple significant Australian policy texts, with a focus on the 2017 *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act Report*. Unlike other approaches to policy analysis which focus on assessing the effectiveness of policy proposals, the WPR approach provides a methodology to examine how assumptions, binaries, histories, and silences are implicated in the constitution of policy problems and proposals. By examining how governing continues to take place beyond the legal document, this paper deconstructs and examines human trafficking laws and its relationship to sex work, with the intention of providing new ways to resisting unequal social arrangements imposed on marginalised communities.

Why Use the WPR Approach in the Field of Critical Sex Work Studies?

There is a rapidly growing body of research that examines the root causes of trafficking in the sex industry from a diversity of sources, such as academics, government bodies, the media, NGOs and religious institutions. While there are highly contested views on sex work and its

relationship to trafficking and the law, the literature in the field often takes the position that the problem of human trafficking in the sex industry is pre-determined and independent to the research and law-making process.

The post-structuralist approach to policy analysis, however, turns the gaze inwards by questioning the 'policy itself, the knowledges that support policy and policy proposals, as well as conventional forms of policy analysis' (Bacchi & Goodwin, 2016, 3). The post-structuralist approach to policy analysis takes the Foucauldian-influenced position that 'problems', 'solutions' and the 'subjects' of laws are constructed through the law-making process. This approach to policy analysis therefore rejects the notion that the problems laws and policies aim to fix are objective and the solutions offered are the direct result of experts addressing tangible issues to produce desired and measurable outcomes. Rather, it takes the view that 'problems', 'solutions' and 'subjects' are 'shaped in ongoing interactions with discourses' (Bacchi & Goodwin, 2016, 4). By drawing attention to the discourses that bring a particular construction of a problem into being, it becomes possible to critically deconstruct and question the complex relationship between sex work and human trafficking laws that underpin the representation of the problem of human trafficking in the sex industry.

Carol Bacchi's *What's the Problem Represented to be?* (WPR) approach provides a methodology to examine the function of particular social and historical discourses underpinning problems as represented in a policy. The WPR approach invites policy analysts to "'work backwards' from policy proposals to examine the 'unexamined ways of thinking' on which they rely, to put in question their underlying premises, to show that they have a history, and to insist on questioning their implications" (Bacchi & Goodwin, 2016, 16). As laws and policies govern people, the WPR approach also provides a methodology to 'understand how governing takes place, and with what implications for those so governed' (Bacchi & Goodwin, 2016, 40). Turning the gaze inwards, social policy analysts are able to make visible the role of broader categories of stakeholders in governing, such as experts in the field, as well as how the subjects are coerced into governing themselves.

A number of researchers have applied a WPR approach to human trafficking policies targeting the sex industry to draw out and challenge taken-for-granted truths and offer alternative ways of understanding the problem (Carson & Edwards, 2011; George, McNaughton, & Tsourtos, 2017; McGarry & FitzGerald, 2019; O'Brien, 2016; Spanger, 2011; Wilson & O'Brien, 2016). In O'Brien and Wilson's WPR analysis of the construction of victims and offenders in the United States' Trafficking in Person (TIP) reports, for example, trafficking

victims were found to be produced as ideal victims' by constructing them as weak and blameless of their victimisation. O'Brien and Wilson (2016, 38-40) also found sex work to be constructed as unique in that it is depicted as a 'universally involuntary behaviour' and 'directly culpable for human trafficking'. O'Brien and Wilson (2016, 40) conclude that the construction of sex work as inherently exploitative silences 'the structural and socioeconomic causes of human trafficking'.

Similarly, Spanger's (2011) WPR analysis of policies in Denmark from the 20th Century to 2010 found that feminist and social policy discourses have come to dominate sex work and human trafficking debates. These discourses conceptualise victims of human trafficking to be operating in the sex industry and lacking agency as a result of gender inequality and poor social conditions, such as poverty (Spanger, 2011). In this light, sex workers, particularly migrant sex workers, are viewed as universally exploited. Both O'Brien and Wilson (2016) and Spanger (2011) argue that the construction of sex workers as weak and passive legitimates paternalistic and punitive state interventions, such as raids and rescue efforts directed at all sex workers and the criminalisation of the sex industry.

This section highlighted the WPR methodology's post-structuralist approach to policy analysis whereby 'problems', 'solutions' and 'subjects' are understood to be shaped by their 'ongoing interactions with discourses' (Bacchi & Goodwin, 2016, 4). The application of the WPR approach by other policy analysts within the field of human trafficking in the sex industry shows that the methodology is a valuable tool in making explicit the assumptions and discourses that are often implicitly called upon to support the construction of a problem. The following section briefly traces the development of Australian trafficking laws and discourses to highlight how the current laws came to be. It also discusses the function of public inquiries in directing discussions, inciting legislative changes, and shaping the relationship between the law, human trafficking, and sex work.

Australian Human Trafficking Inquiries and their Function in Shaping Laws and Discourses.

Public inquiries provide the community and experts in the field an opportunity to participate in the policy making process. Since the modernisation of Australian trafficking legislation in 1999, there has been numerous national inquiries into human trafficking that has shaped Australia's human trafficking laws and policies. These inquiries reviewed submissions from researchers, police and government departments, NGOs, and advocacy and support groups. In the

absence of reliable quantitative data on trafficking, these inquiries have been instrumental in producing knowledge about what is considered human trafficking, the relationship between trafficking and the sex industry, and the laws and policies implemented to prevent and prosecute it.

Before human trafficking laws were introduced into Australia's legal system in 1999, slavery had been a criminal offence since 1824 under the Slave Trade Act (UK). The move to modernise Australia's human trafficking legal framework from the outdated Slave Trade Act 1824 was initiated by the Australian Law Reform Commission (ALRC) in 1990. The ALRC published a report that reviewed the Slave Trade Act 1824 (UK) and concluded that the language used in the Act was 'archaic and a number of their provisions relate to circumstances and institutions that have either changed or long since fallen into disuse' (The Law Reform Commission, 1990, 73). As Australia was a signatory of the 1926 International Convention to Suppress the Slave Trade and Slavery (and its 1953 Protocol) and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Australia's international obligations required the criminalisation of human trafficking and the application of effective penalty provisions.

In 1999, the passage of the Criminal Code Amendment (Slavery and Sexual Servitude) Act 1999 (Cth) (from here onwards referred to as 'Slavery and Sexual Servitude Act 1999') was introduced to replace the UK Slave Trade Act 1824. The Slavery and Sexual Servitude Act 1999 (Cth) sought to modernise Australia's slavery legislation by introducing a range of new offences, including offences against 'sexual servitude' and 'deceptive recruiting for sexual services'. The Minister responsible for introducing the Act, Federal MP Ian MacDonald, asserted that these new offences were to 'deter the impact on Australia of a growing and highly lucrative international trade in people for the purpose of sexual exploitation' (Parliamentary Debate, 24 March 1999, 3076). MacDonald described the 'trade' to involve relocating 'young women' and 'children' to work as 'prostitutes in servile or slave-like conditions for little, if any, reward' (Parliamentary Debate, 24 March 1999).

Since the modernisation of laws in 1999, a number of legal amendments have been adopted that critically impacted the relationship between sex work and human trafficking laws, such as the passage of the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Act 2012 (Cth). This piece of legislation was initiated with the release of the *Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 [Provisions]* inquiry report (from here onwards referred to as the *Crimes*

Amendment Report). One of the primary purposes of this Act was to repeal the sexual element in the 'deceptive recruiting for sexual services' and 'sexual servitude' offences to allow trafficking laws to be applied to non-sexual forms of servitude and all forms of deceptive recruiting (The Parliament of the Commonwealth of Australia, 2012). The need to prove a sexual element to gain a 'deceptive recruiting' and 'servitude' conviction limited the application of these offences to the sex industry. Consequently, these offences discursively, materially, and exclusively connected human trafficking to the sex industry (The Parliament of the Commonwealth of Australia, 2012, 1). The *Crimes Amendment Report* supported the introduction of these amendments and following the release of the Report, the changes to Australia's human trafficking legal response were successfully implemented.

Whilst previous inquiries largely focused on the sex industry, the 2012 legal amendments suggested in the *Crimes Amendment Report* worked to de-sexualise Australian human trafficking legislation by repealing the requirement to prove a commercial sexual element when prosecuting human trafficking crimes (The Parliament of the Commonwealth of Australia, 2012). This was due to the detection of the crime in industries other than the sex industry, such as in the domestic and hospitality industries (LCALC, 2012, 1). The acknowledgement that human trafficking is not unique to the sex industry assisted in shifting national discourse away from singling out sex work as directly responsible for exploitation. Additionally, the assumption that sex trafficking is distinct to labour trafficking was de-stabilised as a result of the move to ensure that the trafficking offences could be applied to any industry.

The acknowledgement that trafficking is not unique to the sex industry and can occur in any industry represents a landmark shift in Australian discourse which previously limited conversations regarding victims and offenders of human trafficking to be exclusively located in the sex industry. Additionally, *the Crimes Amendment Report* (LCALC, 2012) introduces the category migrant sex worker into federal human trafficking inquiry discussions. The public inquiry report characterises migrant sex workers as willing sex workers who have travelled to Australia to work in the sex industry and who are different to victims (LCALC, 2012).

Since the modernisation of human trafficking laws, Australia has secured 20 convictions associated with human trafficking between 2004 to February 2019 (Office for Women in the Department of Prime Minister and Cabinet, 2019, 7). The term 'human trafficking' describes a range of activities criminalised under Australian federal law, including slavery; servitude; forced labour; deceptive recruiting; forced marriage; trafficking in persons; domestic, child and organ trafficking; and debt bondage (Criminal Code 1995, Cth).

The *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act Report* (from here after referred to as the *HPSR*) provides a recent, detailed articulation of the Australian Government's approach to human trafficking. The *HPSR* was informed by 225 submitters from a variety of organisations, industries and backgrounds and there has not been a national trafficking inquiry that has attracted as many submitters since. The *HPSR* details the findings of the *Inquiry into establishing a Modern Slavery Act in Australia* (referred to as the *Modern Slavery Inquiry* from here onwards). The *Modern Slavery Inquiry* was established to investigate the adoption of a United Kingdom (UK) piece of human trafficking legislation, entitled the Modern Slavery Act. If the recommendation to implement a similar Act to the UK Modern Slavery Act 2015 is implemented, the Report presents another landmark change to Australia's human trafficking legal framework.

While the purpose of the inquiry was to assess whether an Act similar to the UK Modern Slavery Act 2015 should be adopted in Australia, the inquiry also posed a broad range of questions regarding the characteristics, prevalence, and best practice responses to human trafficking. As a result, the *HPSR* presents rich insight into the conceptualisation of human trafficking and its relationship with the sex industry. This paper examines the *HPSR* and other relevant policy documents to understand the complex deployment of assumptions and presuppositions in producing truths and knowledge about trafficking in the Australian sex industry, its victims, and the solutions to combat it.

The review of significant inquiry reports and changes to Australia's modern human trafficking legal framework highlighted how the relationship between sex work and trafficking was articulated and shaped by public inquiry reports. The *HPSR* was also introduced as a valued primary source for analysis of this relationship as it articulates what is considered human trafficking, how it relates to the sex industry, and what might be best practice strategies to prevent and prosecute it. In the following section, this paper will focus on applying the WPR approach to analyse the ways in which the problem of human trafficking in the sex industry is constructed and deployed within the *HPSR* (JFADT, 2017).

Methodology

This paper applied the WPR approach to analyse the ways in which the problem of human trafficking in the sex industry is constructed and deployed within the *HPSR* (JFADT, 2017). In particular, the chapters 'Sex Trafficking', 'Labour Exploitation and Australia's Visa Framework',

and 'Defining and Measuring Modern Slavery' (JFADT, 2017) were selected for closer analysis as they provided insight into the *HPSR's* understanding of human trafficking in the sex industry.

The WPR approach deconstructs policy texts by asking 6 interrelated questions:

1. "What's the 'problem' represented to be in the specific policy?"
2. What presuppositions or assumptions underlie this representation of the 'problem'?"
3. How has the representation of the 'problem' come about?"
4. What is left unproblematic? Where are the silences? Can the 'problem' be thought about differently?"
5. What effects are produced by this representation of the 'problem'?"
6. How/Where has this representation of the problem been produced, disseminated and defended? How could it be questioned, disrupted and replaced?"

(Bacchi, 2009, xii)

As highlighted by Bacchi (2009, ix), the understanding that policies 'fix' problems are 'implicit in the whole notion of policy' as 'by their nature policies make changes, implying something needs to change'. Therefore, the WPR approach first invites the analyst to make the problems embedded within policy explicit by working backwards from the policy proposals. This is followed by question two of the WPR approach which requires an interrogation of the 'background knowledge' and 'deep-seated cultural values' to 'uncover the thought that lies behind specific problem representations' (Bacchi, 2009).

The analysis brought to light the repetition of binaries, key concepts and categories which in turn revealed the presence of specific discourses. For example, the repetition of the category 'migrant sex worker' highlight that sex work and migration discourses may be significant discourses within the selected texts. Within a WPR approach, people categories are viewed 'as effects of policies rather than as necessary and natural ways of grouping people' (Bacchi & Goodwin, 2016, 6). Similar to deconstructing problems, reflecting on the deep-seated assumptions and discourses that construct people categories makes it possible to view categories as 'open to challenge and change' (Bacchi & Goodwin, 2016, 4).

By drawing attention to the binaries, key concepts and categories within the selected texts, it was also possible to detect the use of 'dividing practices' (Bacchi & Goodwin, 2016,

51). 'Dividing practices' construct differences and hierarchies within and between groups with one group presented as the 'desired group' (Bacchi & Goodwin, 2016, 51). Divisions govern individuals by promoting the belief that failure to display the characteristics of the 'desired group' is due to the failure of the individual in behaving 'correctly' or taking 'appropriate' action (Bacchi & Goodwin, 2016, 51-52).

Question three involves tracing 'genealogies' or 'the specific developments and decisions' that contributed to the representation of a problem identified in a policy proposal (Bacchi & Goodwin, 2016). Borrowing from the work of Foucault, tracing the genealogy of a problem involves identifying competing representations that existed over time and place to 'de-inevitablise' the present and reveal 'that things could have developed quite differently' (Bacchi, 2009, 11; Bacchi & Goodwin, 2016, 46). Working backwards, this paper traces the history of human trafficking activities in Australia, drawing out the competing discourses operating at major historical points.

Question four of the WPR approach requires the analyst to observe the limitations of the discourses and underlying assumptions within the representation of a problem. In doing so, it is possible to draw out silences which assists in the task of understanding how the representation of a problem could be viewed differently.

Turning to question five, the analyst is required to investigate how the construction of a problem and accompanying binaries, categories and key concepts function 'to benefit some and harm others' (Bacchi, 2009, 15). Question five invites the analyst to consider how the representation of a problem can influence what we can think about a topic, the way people see themselves and others, and what resources are available to individuals.

Question six of the WPR approach invites the analyst to examine where the problem, as constructed in the chosen texts, is reproduced elsewhere to 'reach their target audience and achieve legitimacy' (Bacchi & Goodwin, 2016, 19). While each WPR question was applied to the selected sources, this paper will be focusing and reporting on the findings drawn from questions 1,2 and 3.

This section highlighted WPR methodology's post-structuralist approach to policy analysis whereby 'problems', 'solutions' and 'subjects' are understood to be shaped by their 'ongoing interactions with discourses' (Bacchi & Goodwin, 2016, 4). The next section will discuss the outcome of applying these questions to the chosen texts.

Results

What is the 'Problem' Represented to be in the HPSR?

We first answer the question, 'What is the problem represented to be?' to clarify the explicit and implicit problems presented in the *HPSR*. Working backwards from the policy proposal, the Report's central proposal is to advocate for the adoption of a piece of legislation similar to the Modern Slavery Act 2015 (UK). The term 'modern slavery' is used throughout the Report, signalling that the stated problem the Report aims to fix is modern slavery.

While at the time of writing the term 'modern slavery' was not in existence in Australia's legal framework, the term has been frequently used within human trafficking discussions in Australia since the modernisation of human trafficking laws in 1999. Despite this, there has been little effort devoted to defining it. The *HPSR*, however, dedicates an entire chapter to discussing the possible definitions and uses for the term. Ultimately, the Report determines that modern slavery should continue to be a 'non-legal umbrella term' that draws from Australian human trafficking offences as well as child exploitation in residential settings, child labour and 'other slavery-like practices' (JFADT, 2017, 46). The *HPSR* also declares that modern slavery is a problem that occurs in Australia and is 'present across a range of industries' (JFADT, 2017, ix).

In the chapter dedicated to defining modern slavery, the term 'sex trafficking' is used repeatedly and the inclusion of the sub-chapter titled 'Sex Trafficking' indicates that it is included under the umbrella of modern slavery. As this analysis is interested in the *HPSR*'s understanding of the relationship between modern slavery and the sex industry, this paper focuses on the 'Sex Trafficking' subchapter and the recommendations drawn from it.

Similar to modern slavery, the Report does not define activities or behaviours that fall under the umbrella of sex trafficking. While not explicitly defined, the 'Sex Trafficking' chapter focuses on discussing the relationship between human trafficking and the sex industry and uses a variety of terms interchangeably to describe sex trafficking, such as 'human trafficking for the purpose of sexual slavery', 'sexual exploitation', 'involuntary human trafficking in the sex industry', and 'slavery-like offences'. Some of the terms are defined within Australia's human trafficking legislation, such as 'slavery' and 'slavery-like offences' (Criminal Code 1995, Cth). Other terms have legal definitions but are not part of Australia's official human trafficking

legal response, such as 'sexual slavery', while others do not have an agreed upon definition in Australia, such as 'involuntary human trafficking'.

The 'Sex Trafficking' subchapter does, however, clarify what sex trafficking in Australia does not include. It states:

the Committee agrees that the definitions of sex trafficking as outlined in the [Modern Slavery Act 2015 (UK) is] not appropriate for adoption in Australia. The Committee supports the current Australian definitions of human trafficking, slavery and slavery-like offences under the Criminal Code
(JFADT, 2017, 216).

While the term 'sex trafficking' is not used within the Modern Slavery Act 2015 (UK), the Act refers to 'sexual exploitation' in Section 3: Meaning of Exploitation (Modern Slavery Act 2015, UK). This section indicates that 'sexual exploitation' refers to 'Part 1 of the Sexual Offences Act 2003 [UK] (sexual offences)' which criminalises activities associated with sex work, such as 'solicitation', 'causing or inciting prostitution for gain' and 'controlling prostitution for gain'. The sex work-related offences in the Sexual Offences Act 2003 (UK) are components of the UK's sex industry regulation where brothels, 'pimping', and street-based sex work are criminalised. That is, the 'solicitation' offence is used to criminalise street-based sex workers while 'causing or inciting prostitution for gain' and 'controlling prostitution for gain' are 'anti-pimping' legislation that have been critiqued by some to criminalise sex workers who operate with other sex workers from the same premise or hire staff (English Collective of Prostitutes, na, 1). Consequently, the UK Modern Slavery Act 2015 captures breaches to sex industry regulation as forms of human trafficking. On the other hand, while similar offences directed at street-based sex workers, brothels, and 'pimps' exist in a number of states and territories in Australia, the 'Sex Trafficking' chapter clearly indicates that the Report's conceptualisation of human trafficking in the sex industry or sex trafficking excludes breaches to sex industry regulation.

While the chapter speculates whether the problem of sex trafficking can be prevented through sex industry regulation, it ultimately rejects different legal models advocated by organisations in the sector, stating that further research is needed before the Report is able to comment on a best practice regulatory model (JFADT, 2017, 215). In its place, the *HPSR* endorses the recommendations of a previous inquiry report, *the Human Trafficking Report* (JFADT, 2017, 216). This report presents the findings of an earlier public national inquiry into

human trafficking in Australia (PJCLE, 2017). Published in 2017, *the Human Trafficking Report* details the outcomes of a public inquiry which primarily focused on examining the effectiveness of Australia's visa system and criminal justice responses in preventing human trafficking in Australia. The recommendations from *the Human Trafficking Report* endorsed in the *HPSR* include:

Recommendation 13: The committee recommends that the Commonwealth government commission balanced and constructive research into the prevalence of sex trafficking into and within Australia.

Recommendation 14: The committee recommends that the Commonwealth government strengthens visa systems to prevent involuntary human trafficking into the sex industry in Australia.

Recommendation 15: The committee recommends that Australian governments support and fund initiatives to inform migrant sex workers about their legal rights and obligations both pre-departure and post-arrival in Australia

(PJCLE, 2017, xiii).

As stated by Bacchi (2009, 3), 'looking at what is proposed as a policy intervention will reveal how the issue is been thought about'. With this in mind, the rejection of the sex trafficking definition outlined in the UK version of the Modern Slavery Act 2015 indicates that the *HPSR* does not view sex trafficking to involve breaches to Australian sex industry regulation. The rejection of the sex industry regulatory models advocated by organisations on the basis that the Report has not sufficiently examined the models to make a decision on which is best practice shows that there is ambivalence about the connection between sex industry regulation and sex trafficking. On the other hand, the recommendation to 'strengthen visa systems to prevent involuntary human trafficking in the sex industry' (JFADT, 2017, 215) suggest that the problem has something to do with Australia's visa system. Moreover, the recommendation to 'fund initiatives to inform migrant sex workers about their legal rights and obligations' (JFADT, 2017, 215-216) highlight that the problem of sex trafficking has something to do with migrant sex workers themselves.

The Construction and Deployment of the Migrant Sex Worker People Category.

The WPR approach takes the position that people categories are constructed and encourages the interrogation of the categories that are deployed in policy documents. In this light, the category migrant sex worker needs to be considered as a socially constructed category which is 'determined by social, cultural and historical' forces (Bacchi, 2009, 58). As Bacchi argues further, that people categories are central to governing processes, it is necessary to also reflect on the meaning and purpose of the category migrant sex worker within the *HPSR* by interrogating the 'underlying assumptions and preconceptions' underpinning the category (Bacchi, 2009, 9).

Migrant sex workers emerge as a significant category within the Report's construction of sex trafficking. This is highlighted through the repeated use of the term and its derivatives, such as references to 'migration sex worker'. The 'Sex Trafficking' subchapter also explicitly discusses the human trafficking risks to migrant sex workers as a result of various sex industry regulatory models.

Although there have been many national inquiries into human trafficking that exclusively investigated exploitation in the sex industry, the category migrant sex worker was not always explicitly referred to as the target of the policy document. As highlighted above, we first see the use of the category 'migrant sex worker' in *the Crimes Amendment Report* (LCALC, 2012), a significant inquiry report which de-sexualised key human trafficking legislation to ensure the laws could be applied to non-sexual forms of servitude and all forms of deceptive recruiting (The Parliament of the Commonwealth of Australia, 2012). Since the broadening of the servitude and deceptive recruiting offences, many human trafficking referrals have been made to the Australian Federal Police (AFP) that involved cases of exploitation outside of the sex industry, such as in the agricultural and hospitality industries (Australian Government, 2016).

With the introduction of the people category 'migrant sex worker', *the Crimes Amendment Report* characterised migrant sex workers as willing sex workers who have travelled to Australia to work in the sex industry and who are different to victims (LCALC, 2012). For example, the Attorney General is quoted in the Report asserting that Australia's human trafficking response 'does not affect the rights of individuals to consent to work in any industry in ordinary circumstances, including the sex industry' (LCALC, 2012, 21). By distinguishing the category 'migrant sex worker' from the category victim, the report is enacting

what Foucault (1982) describes as a 'dividing practice' in which they are advocating for migrant sex workers to be perceived and treated differently to victims of trafficking. As highlighted earlier, a 'dividing practice' is a process whereby groups are constructed as different, in opposition and unequal to each other.

The use of the category 'migrant sex worker' in the *HPSR* must be viewed in light of historical changes to Australian human trafficking laws which de-stabilised long held beliefs about the relationship between trafficking, sex workers, and the sex industry. The *HPSR*'s differentiation of the category migrant sex worker from victim of trafficking is seen when the Report recommends different proposals targeting these categories. For example, the Report's endorsement of the recommendation to 'strengthen visa systems to prevent involuntary human trafficking' appear to be targeting victims whereas the recommendation to 'fund initiatives to inform migrant sex workers about their rights and obligations' is clearly targeting migrant sex workers. In this light, the application of the WPR approach found that that the *HPSR* adopts a similar characterisation of migrant sex workers as the *Crimes Amendment Report* whereby they are constructed as legitimate workers who willingly travel to Australia to work in the sex industry and are different to victims of human trafficking.

What Presuppositions or Assumptions Underlie this Representation of the Problem?

The recommendation to 'support and fund initiatives to inform migrant sex workers about their legal rights and obligations' assumes that migrant sex workers can prevent their exploitation given the right information. In this light, migrant sex workers are constructed as 'responsibilised subjects' (Bacchi and Goodwin, 2016). As highlighted by Bacchi and Goodwin (2016, 73), producing responsibilised subjects is a tool of governing that rule by constructing subjects as largely responsible for their own wellbeing, diverting the focus from 'the broad-based social factors that shape lives' and impact the choices people make. Returning to the original policy document this recommendation was adopted from, *the Human Trafficking Report* states that the rationale to 'support and fund initiatives to inform migrant sex workers about their legal rights and obligations' is due to the conclusion that:

... migrant and CALD sex workers, on account of cultural and language differences, as well as fear about reprisal and/or their migration status, may not know where they can seek support and advice, or **may be unwilling to do so** [*emphasis added*]

(PJCLE, 2017, 62).

The assumption underpinning this statement is that exploitation can be reduced by providing migrant sex workers with information on where to seek support and advice. However, another assumption that emerges from the Report's rationale is that, for whatever reason, migrant sex workers are 'unwilling' to prevent and redress their exploitation. As a result, it appears that while migrant sex workers are constructed as 'responsibilised subjects' who can prevent their own exploitation given the right advice, they are also constructed as 'unwilling to do so'.

It is worth noting that the construction of migrant sex workers as 'responsibilised subjects' who are unwilling to prevent their own exploitation is not unique to the 'Sex Trafficking' chapter of the *HPSR*. While the 'Labour Exploitation and Australia's Visa Framework' chapter excludes any reference to the commercial sex industry, even when discussing sexual exploitation, a key recommendation made in this chapter is to improve the information available for migrant workers (JFADT, 2017). Migrant workers, like migrant sex workers, are constructed as 'responsibilised subjects' who are able to choose to not be exploited given the right information.

While the *HPSR* presents a number of potential underlying causes of labour exploitation of migrant workers, submitters views on the motivations and reasons why migrant workers choose to become and remain in exploitative working situations is presented in the Report. For example, the Victorian Farmers Federation, a lobby group for farmers, are quoted in the Report asserting that:

unless you address the **underlying motivation as to why someone allows themselves to be exploited** [*emphasis added*], no new act put in place and none of the current laws can protect these people.

(JFADT, 2017, 281).

While migrant workers are constructed as able to choose to not be exploited, they are also constructed as 'allow[ing] themselves to be exploited' and, at least in part, responsible for the existence of the problem of human trafficking in Australia. As a result, migrant workers are framed in a similar way as migrant sex workers whereby both are constructed as willingly entering into exploitative working conditions. The *HPSR* indicates that migrant workers exploit themselves by entering into debt contracts, becoming 'illegal migrants', and staying in exploitative working conditions. By constructing migrant workers and migrant sex workers as

responsible for their exploitation, the *HPSR* appears to be fostering doubt as to whether either of the categories can be recognised as victims of human trafficking.

On the other hand, the *HPSR*'s endorsement of the recommendation to strengthen visa systems to prevent involuntary human trafficking into the sex industry introduces the category 'involuntary human trafficking victim'. Again, turning to the policy document where the recommendation originated from to interrogate the rationale, *the Human Trafficking Report* states:

The committee is concerned by the evidence of Collective Shout and CATWA [the Coalition Against Trafficking in Women Australia] that some women are trafficked into the Australian sex industry on the promise of other types of work and/or under the guise of a student visa. The committee shares these concerns, and suggests that such exploitation can be reduced by strengthening Australia's visa systems such that there is less opportunity for third parties to abuse the visa process for the purpose of sex trafficking into Australia.

(PJCLE, 2017, 63).

Collective Shout and CATWA are two prominent anti-sex work organisations in Australia that understands sex work to reinforce and strengthen gender-based inequality and thus view sex work to be closely aligned with sexual exploitation and trafficking (CATWA, na, 'About CATWA'). In this light, the category involuntary human trafficking victim appears to be describing 'women [who] are trafficked into the Australian sex industry on the promise of other types of work and/or under the guise of a student visa'. In other words, 'involuntary human trafficking victims' are presented to include 'women' who are duped and forced into sex work. The rationale presented in *the Human Trafficking Report* also highlights that involuntary human trafficking victims are understood to be the 'real' sex trafficking victims. There is a body of research that argues that within human trafficking discourses, the recognition of victims "relies heavily on the distinction between 'innocent victims' of forced prostitution and 'guilty sex workers' who had foreknowledge of the fact they would be performing sexual labour" (Chapkis, 2005, 57-58) and support is only provided for the 'innocent victims' (Pearson, 2002; Davidson, 2006). By emphasising the lack of agency of the involuntary human trafficking victims through the use of the term 'involuntary' as well as describing the category to include 'women' who are tricked and forced into operating in the sex industry, the Report is signalling

for the category involuntary human trafficking victims to be recognised as the real victims of human trafficking.

The construction of involuntary human trafficking victims as duped into sex work is in contrast to the representation of migrant sex workers as willing sex workers who are responsabilised subjects. It appears, then, that migrant sex workers are excluded from the involuntary human trafficking victim category and as a result the broader victim category. In this light, the *HPSR* appears to be re-producing the dividing practice originally observed in the *Crimes Amendment Report* (2012) whereby migrant sex workers were constructed as different to victims.

The application of the WPR methodology in this section brought to light the function of the key concept 'sex trafficking' and the categories 'migrant sex worker' and 'involuntary victim of human trafficking'. Taking a closer look at the key categories, it was observed that involuntary human trafficking victim category was constructed in opposition to the migrant sex worker category whereby the former is constructed as duped into sex work whereas the latter is represented as willing sex workers who are responsabilised subjects. The analysis of the 'Labour Exploitation and Australia's Visa Framework Chapter' highlighted that a similar discourse is being utilised to define all migrant workers irrespective of the industry they are operating in whereby migrant workers, like migrant sex workers, are constructed as responsabilised subjects who are culpable for their exploitation. With this in mind, the next section will speculate on what effects are produced by the deployment of these assumptions within the *HPSR*. By questioning and analysing the discourses and silences within the Report, the next section will also discuss how things could be viewed differently.

Discussion

The *HPSR*'s endorsement of the recommendation to 'support and fund initiatives to inform migrant sex workers about their rights and obligations' (JFADT, 2017, 215-216) was underpinned by the assumption that migrant sex workers can prevent their own exploitation given the right information. Returning to the original policy document the recommendation was retrieved from, the rationale for initiatives to inform migrant sex workers about their rights and obligations (JFADT, 2017) also revealed that, for whatever reason, migrant sex workers are assumed to be unwilling to prevent their own exploitation.

The WPR analysis suggested that the construction of migrant sex workers as able to prevent their own exploitation but unwilling to do so was not unique to the 'Sex Trafficking' chapter. The 'Labour Exploitation and Australia's Visa Framework' chapter of the *HPSR* similarly constructed migrant workers as able to prevent their own exploitation but unwilling to do so. While the construction of migrant sex workers and migrant workers in a similar way may suggest that the Report is understanding sex workers by the same set of assumptions as other legitimate workers, a privileging of a broader discourse is also evident. The construction of migrant sex workers and migrant workers as responsabilised subjects who are unwilling to prevent their own exploitation and therefore are culpable for their exploitation constructs these groups as the problem. Constructing these people categories as the problem has the effect of overshadowing the structural factors that increase all migrant workers exposure to exploitative working conditions and create barriers to accessing support. It also has the effect of reinforcing existing power dynamics whereby the Report can position its role in the human trafficking response as benevolent and paternalistic while not taking action on the broader structural causes of exploitation.

The analysis also highlighted the introduction of the new category involuntary human trafficking victim. It was argued that this category is constructed to include the real victims of human trafficking in the sex industry. The analysis thus exposed the way the victim category was limited to those who were duped into sex work. However, the *HPSR* does not require victims in non-sex work industries, such as in hospitality or agriculture, to be 'tricked' in order to be considered a true victim. In other words, those experiencing exploitation in other industries are considered victims despite having initially consented to travel and work in a particular industry. The requirement for those experiencing exploitation in the sex industry to be duped in order to be considered a victim singles out the sex industry for special treatment.

Furthermore, it was argued that migrant sex workers are excluded from the victim category as they are constructed as willing sex workers. Within a post-structuralist policy analysis framework, discourses that are deployed in policies make subject positions available (Bacchi, 2009, 16). These subject positions, when assumed, assist people in making 'sense of the social world from that standpoint, all the while being subjected to the full range of discourses constituting the position' (Bacchi, 2009, 16). Consequently, excluding migrant sex workers from the victim category may have the effect of discouraging migrant sex workers from reporting exploitation and utilising available support services as they may be led to believe that their initial consent to work in the sex industry makes them ineligible to be categorised as a victim and access support.

While this paper is not suggesting that all migrant sex workers should be viewed as victims, the requirement to be manipulated into sex work excludes consenting migrant sex workers from benefiting from the solutions proposed in the Report to expand victims' access to Australia's human trafficking response. As highlighted in the Australian Trafficking in Person reports, human trafficking convictions in the sex industry largely does not include forced sex work (APTIC, 2009, 2010, 2011, 2012; ICHTS, 2014a, 2014b, 2016, na). At the time of writing, there has only been one conviction of human trafficking where the victim was duped and forced into operating in the sex industry (Office for Women in the Department of Prime Minister and Cabinet, 2019, 9). Most trafficking cases have included conditions akin to wage theft, 'unfair debt contracts' and inadequate breaks (APTIC, 2009, 2010, 2011, 2012; ICHTS, 2014a, 2014b, 2016, na). The construction of victims as duped into sex work is in contrast with Australia's human trafficking convictions that has been achieved so far. In light of limited reliable quantitative data on human trafficking in Australia, the convictions are extremely valuable in understanding the types of exploitation victims in the sex industry may experience. The *HPSR's* construction of victims does not acknowledge or provide any solutions to increase support for victims experiencing the types of exploitation that have been presented in the convictions Australia has gained so far.

The recommendation to 'strengthen visa systems to prevent involuntary human trafficking in the sex industry' assumes that the problem of sex trafficking can be largely resolved through greater restrictions and surveillance of Australia's visa system. However, what fails to be problematised is how Australia's existing restrictive visa framework and highly monitored borders may exacerbate rather than prevent trafficking. There is a growing body of research that argues that when migration is restricted, rather than deterring migration, migrants are forced to rely on less traditional and potentially non-legal routes of entry. For example, where it is difficult to independently gain a visa, migrants are more likely to utilise third parties to assist in their migration process (Kapur, 2005, 28). For some migrants, the use of a third party is the only way to legally travel and work in Australia (Renshaw, 2016, 16). Research from Australia shows that opportunities for exploitation increases when migrants are forced to use a third party, such as a migration broker, to travel and work in Australia (Renshaw, 2016). Expanding migrant workers, including migrant sex workers, ability to independently and legally travel and work, in effect, could reduce opportunities for exploitation by reducing the need to use a third party. However, the recommendation to 'strengthen visa systems to prevent involuntary human trafficking in the sex industry' silences this possibility.

Conclusion: New Ways of Thinking About the Problem and Potential Solutions

While Australia presented potential to be distinct in not singling out the sex industry for human trafficking responses, this paper's analysis of the deployment of the category victim in the *HPSR* exposed a different conclusion. It was revealed that while the legal framework has shifted away from singling out the sex industry, Australian policy discourses that impacts the application of the laws continues to single out the sex industry for special requirements by constructing victims of human trafficking in the sex industry as duped into sex work. Victims of human trafficking in industries other than the sex industry, however, do not need to meet this requirement to be viewed as a victim.

Additionally, the national sex trafficking convictions shows that the types of exploitation experienced by victims largely does not include being tricked into sex work. To broaden migrant sex workers access to support and protection, the *HPSR* needs to move away from understanding victims of sex trafficking as duped into sex work. Understanding victims to also include migrant sex workers who willingly travelled to work in the Australian sex industry but experience exploitation nonetheless may increase the Report's ability to provide solutions that reduce barriers to reporting sex trafficking and accessing support.

On the other hand, the deployment of the assumption that all migrant workers, irrespective of the industry they are operating in, are responsabilised subjects who are culpable for their exploitation continues to reduce the ability of the Report to provide recommendations that will increase victims access to support. In this light, efforts to increase migrant sex workers access to support must occur alongside challenging the assumption that migrant workers are responsible for their exploitation. In addition, greater attention needs to be drawn to the structural conditions that expose all migrant workers to exploitation and reduces access to support.

The deconstruction of the deep-seated assumptions underpinning the problem of human trafficking and the solutions proposed within the *HPSR* and other key policy documents brought to light the complex relationship between sex workers and Australian human trafficking laws and policies. In saying this, this paper proposes that there is a need to challenge the assumptions and presuppositions that are constructed in the *HPSR*. The national human trafficking convictions provide vital data on the types of exploitation migrant sex workers may experience. While this data would not provide a whole picture, providing responses that addresses known types of exploitation has the potential to enhance the

effectiveness of the Australian response against human trafficking in the sex industry. As highlighted above, the types of exploitation experienced by migrant sex workers has included conditions akin to extreme forms of labour exploitation. As a result, reducing migrant sex workers barriers to accessing Australia's labour rights framework as part of the human trafficking response has the potential to reduce exploitation in the sex industry. Additionally, there is a noteworthy gap in scholarly research on how the unique structural factors in Australia, such as the immigration system and labour rights framework, may increase the risk of exploitation of migrant workers in different industries. To advance all migrant workers access to Australia's human trafficking response, it is vital that greater research into the types of exploitation and structural conditions that place migrant workers at risk of exploitation and create barriers to accessing support is examined.

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