



Vixen Collective

(Victoria's peer only sex worker organisation)

Information for the *Review into Decriminalisation Of Sex Work*

The Andrews Labor Government has called a review to consider the decriminalisation of all forms of sex work to achieve better public health and human rights outcomes for Victorian sex workers. The Review will be led by the Member for Northern Metropolitan Region Fiona Patten.

The Review is said to consider:

- 'All forms of sex work, including sex work in commercial brothels and escort agencies, sexual services provided in massage parlours and similar businesses, sex work by small owner-operated businesses, and street-based sex work
- Workplace safety including health and safety issues and stigma and discrimination against sex workers
- Regulatory requirements for operators of commercial sex work businesses
- Enforcement powers required to address criminal activity in the sex work industry, including coercion, exploitation, debt bondage and slavery
- Local amenity and the location of premises providing sexual services and street-based sex work
- The promotion of public health and appropriate regulation of sex work advertising
- And the safety and wellbeing of sex workers, including the experience of violence that arises in the course of sex work and as a consequence of it, and worker advocacy for safety and wellbeing.'

"Key stakeholders" identified by the Review Team, composed of Department of Justice and Community Safety (DJCS) staff and Fiona Patten, are being invited to participate in "facilitated sessions". The Review Team states that "*participating stakeholders are representatives of community, police and local government, health and workplace safety services, as well as people with direct or expert knowledge of, and experience in Victoria's sex work industry, including business operators and sex workers themselves.*"

It will be important to have sex worker voices shaping the review of Victorian sex industry regulation and calling for the full decriminalisation of sex work. This is an important opportunity to make sure the Victorian government understands why sex workers need access to workplace protections, occupational health and safety mechanisms, and equal protection under the law. Scarlet Alliance and Vixen Collective will be facilitating community consultations to ensure sex worker voices, as the main stakeholders, are upfront in this review process.

The *Review into Decriminalisation Of Sex Work* (hereafter referred to as the *Review*) will likely attract many people's opinions but as sex workers we know best how these laws and regulations impact on our work and our safety.

Decriminalisation is essential to our workplace rights, health and safety.

Sex workers want full decriminalisation in Victoria!

This information pack is to assist people to have a say on the proposed laws.

It includes information on:

1. Where to locate *the Review* and other reference materials for the submissions process
2. Have your say as a sex worker or allied stakeholder
3. Laws in Victoria
4. Full decriminalisation & the evidence
5. Problems with the current sex industry regulation in Victoria
6. Other key points
7. Further reading and reliable research

If you would like more information on *the Review* and its submissions process you can contact us on the details below:

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1. Where to locate *the Review* and other reference materials for the submissions process

There is very little public information available on the review process. The following link provides some information on the review and the stated Terms of Reference (TOR) for the review.

<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>

2. Have your say as a sex worker or allied stakeholder

As a Sex Worker

You can have input into the review through the online and in-person consultations being jointly conducted by Vixen Collective and Scarlet Alliance. Tell us about the way the current laws impact on your work and how decriminalisation will change that – it is important for the Victorian Government to understand the real impact of the laws, and hear what sex workers want. Please contact Vixen Collective for information on how to register for a consultation.

As an Allied Stakeholder

Support sex workers' right to health, safety, inclusion, justice, freedom from police and state violence, discriminatory laws and policies. Add your voice to the support for the full decriminalisation of sex work, sex workers, our workplaces, clients and third parties, and a funded peer-only sex worker service for Victorian sex workers. Full decriminalisation is essential for sex workers' rights, health and safety.

Full decriminalisation:

- Removes police as monitors and enforcers of the sex industry regulation;
- Repeals criminal laws specific to sex work;
- Regulates sex industry businesses through standard business, planning and industrial codes;
- Does not single out sex workers for specific regulation; and
- Is a whole-of-government approach to regulation.

Full decriminalisation is NOT:

- Registration of sex workers;
- Registration/licensing of sex industry businesses;
- Restriction of sex work to industrial zones;
- Mandatory sexual health testing;
- Mandatory condom use laws;
- Police regulating sex work or our workplaces; and
- Treating private sex workers as a 'one person brothel' or 'small owner operated brothel'

3. The laws in Victoria

In Victoria, the current regulatory system for sex work is licensing. Licensing creates a two-tiered sex industry where a small percentage of the industry can meet compliance requirements while the majority of the industry cannot and is forced to operate outside of the legal framework. Often it is those in the sex worker community who are already most at risk of police and state violence who are unable to work compliantly.

Licensing undermines sex workers' capacity to decide where, how and with who they work, and this presents a significant risk to our occupational health and safety.

Within the licensing system in Victoria, Victorian police fulfill an enforcement role, which creates significant barriers for sex workers accessing police assistance.

The licensing system forces sex workers into contact with the police and courts, contributes to records with the state that may affect future work and life options (employment, housing, custody, etc) and serves no purpose except to further stigmatise a marginalised community.

The Victorian legislation is governed by the: Sex Work Act 1994 (formerly known as the "Prostitution Control Act 1994"), Sex Work Regulations 2016 (which saw the Sex Work Regulations 2006 revoked), and the Public Health and Wellbeing Act 2008.

In summary:

- Private sex workers must register with the Business Licensing Authority (BLA) and obtain a Sex Work Act (SWA) number. A historical register of sex workers' legal details is kept permanently. Private sex workers who wish to work from home or their own premises ('small owner operated brothel') must get a local council permit and comply with zoning requirements, which is effectively impossible for most private sex workers, requiring them to go to other locations (such as clients' homes or hotel rooms) to do their work, that they have reduced familiarity with or control over.
- Street-based sex work is criminalised. Street based sex workers are subject to penalties due to their work, and heightened stigma and oppositional police contact.
- Escort agencies and brothels must comply with the exacting licensing and registration requirements, as well as zoning requirements of local councils.
- Brothel and agency based workers are forced to select workplaces from a limited number of licensed brothels, giving disproportionate power to brothel owners/operators, and impacting sex workers' ability to negotiate work conditions.
- Police are one of the main enforcers of sex industry regulation.
- Sex industry advertisements must comply with strict and very specific regulation.
- Sex workers health and safer sex practices are mandated by law. Sex workers must undergo 3 monthly mandatory sexual health testing and sex workers with HIV are criminalised.

4. Why Sex Workers Want Decriminalisation

The full decriminalisation of sex work involves the removal of all criminal and other laws specific to sex work - this does not mean no regulation, but that sex work is then regulated like any other work. In Victoria, this includes removal of laws in the Sex Work Act 1994 (Vic), Sex Work Regulations 2016 and the Public Health and Wellbeing Act 2008. By repealing the laws which criminalise aspects of sex work, sex workers are better able to access the rights and protections afforded to other workers and community members, including employees, contractors and small business owners. Decriminalisation does not include registration or licensing in any form.

Rather than resulting in de-regulation or 'no regulation', full decriminalisation means that sex industry businesses are regulated in the same way as other businesses, subject to existing regulatory mechanisms such as Victorian Government Planning Provisions and zoning regulations, WorkSafe and the Australian Taxation Office. In NSW, the sex industry is subject to a whole of government regulation including Workplace Health and Safety, council, business, industrial, taxation, migration, planning, health and criminal laws and regulations. Police are not involved as regulators at any level unless there has been a breach of law.

Existing laws covering exploitative work practices in any workplace; violence; robbery; fraud; sexual assault; harassment already exist - sex work specific laws are not required. When criminalisation and licensing is lifted it enables greater access for sex workers to these existing laws and processes. Sex workers are also more likely to report crime or harassment to police and seek legal recourse for exploitative workplace conditions when sex work is decriminalised. As part of decriminalisation, it is also essential that there be a *funded* and *peer-only* sex worker organisation and services available to Victorian sex workers, as recognised as best practice by the National HIV Strategy.

Full decriminalisation increases opportunities for outreach and peer education. Decriminalisation supports sex worker self-determination, reduces stigma and discrimination, and improves access to services including health, housing, family violence. By contrast, licensing or registration creates significant negative impacts on sex workers. Specifically, it is the most marginalised among our community that are most affected by the Victorian licensing system and who have the most to gain from the full decriminalisation of all forms of sex work. Street-based sex workers, trans and gender diverse sex workers, Aboriginal and Torres Strait Islander sex workers and others are all disproportionately affected by both the intersectional stigma that comes from multiple marginalisation, and the struggles of working within or outside the licensing system.

In NSW, decriminalisation has brought improved work safety, high rates of safer sex practice and low rates of sexually transmitted infections with no evidence of organised crime. The NSW sex service premises planning advisory panel highlighted that 'establishing planning controls which are reasonable (rather than unnecessarily restrictive) is likely to result in a high proportion of sex services premises complying with council requirements, with corresponding benefits to council operations, the local community and health service providers'.

[The Lancet Series](#) on HIV and sex workers showed that decriminalisation of sex work would have the greatest effect on the course of HIV epidemics across all settings, averting 33–46% of HIV infections in the next decade. Decriminalisation would reduce mistreatment of sex workers and increase their access to human rights, including health care.

Full decriminalisation is widely recognised as the best practice regulatory model that best supports sex workers health, safety and labour rights. Decriminalisation is supported by sex work

organisations in Australia and internationally, within Australia's National BBV and STI Strategies, and by a growing number of global organisations including United Nations, UNAIDS, UNFPA, UNDP, Amnesty International, International Labor Office (ILO), World Health Organisation, Lancet Medical Journal, Global Alliance Against Trafficking in Women, and more. Victorian Labor added "the decriminalisation of all sex work in Victoria as per other systems recognised internationally by human rights organisations" to their policy platform in 2018.

See further reading list for more evidence on decriminalisation.

5. Problems with the current sex industry regulation in Victoria.

Business Licensing and Registration

The Victorian licensing system has created a two-tiered sex industry where a minority of the industry can meet the onerous compliance requirements while the majority of the industry is forced to operate outside of the legal framework. Experience from Victoria and Queensland shows that licensing and registration fail to achieve substantial levels of compliance, with up to 50% and 80% of sex industry businesses respectively forced to operate outside of regulation.

The Victorian licensing system means that sex workers must make choices about where, how, and with whom they work, based on the onerous requirements of the licensing system, rather than their individual health and safety needs. For sex workers who are forced to operate outside of the licensing system, there are significant barriers to accessing essential services, such as targeted health and support programs. For sex workers operating within these frameworks, accessing essential services can result in surveillance, discrimination, fines, or even deportation.

The Sex Industry in New South Wales: A Report to the NSW Ministry of Health recommends that the licensing of sex work should not be regarded as a viable legislative response and is a 'threat to public health'.¹ The *Eighth National HIV Strategy* and the *Fourth National Sexually Transmissible Infections Strategy* explicitly listed 'criminalisation, licensing, registration'^{2,3} as significant barriers to implementing public health strategies within the sex industry.'

Licensing and registration as a regulatory model create a burden for the State in terms of both administration and cost:

"Presently, the costs of effective administration of the Act greatly exceed the revenue. Based on recent discussions with the BLA [Business Licensing Authority] and CAV [Consumer Affairs Victoria], it is expected that in 2013/14, the combined cost of the sex work service provider

¹ Donovan, B., et al. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Retrieved on 25/03/20 from https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012.pdf. Pg 7.

² Department of Health. (2018a). *Eighth National HIV Strategy 2018-2022*. Retrieved on 25/03/20 from [http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf). Pg 22.

³ Department of Health. (2018b). *Fourth National Sexually Transmissible Infections Strategy 2018-2022*. Retrieved on 25/03/20 from [http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/STI-Fourth-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf). Pg 22.

and brothel manager schemes was \$1,664,086 compared to \$899,560 in revenue. This equates to 54% cost recovery."⁴

Registration of private sex workers.

In Victoria, Private sex workers must register with the Business Licensing Authority (BLA) and obtain a Sex Work Act (SWA) number to comply with the law. A historical register of sex workers' legal details is kept permanently.

The registration process requires private workers to provide the BLA with their legal details, including name and address, and all names and phone numbers that will be used in advertising, and a photocopy of a true form of ID signed by a witness. Private workers' registration details are stored in a register that is not accessible to the public. However, it can be accessed by 'the Director, by members or staff of the Authority or by authorised police officers or authorised officers of the responsible authority'. While sex workers can get SWAs 'deregistered' on request, a 'historical record' of the registration is kept by the BLA, which contains all the personal information given in the initial registration and can be accessed by the same people. The BLA also retains the authority to refer relevant matters, which can include this record, to the police, WorkCover, the Australian Taxation Office, the Department of Immigration and Border Protection, Consumer Affairs Victoria and any other body.

The existence of a permanent register which links sex workers' legal names to sex work, effectively for life, is a threat to the privacy, safety and wellbeing of sex workers.

On the other hand, the ACT and NT have recently moved to repeal the requirement for individual sex workers to register as it is acknowledged that registration fails to achieve its intended outcomes and is counterproductive to sex workers' safety. In August 2018, the ACT repealed the requirement for private sex workers to register because it was recognised that registration is a policy failure.⁵ The register serves no discernible practical purpose other than surveillance by the state. Registration does not increase sex worker safety and results in the exclusion of sex workers from the regulated sex industry, creating significant barriers to accessing legal, health and support services.

In the NT, the government passed the *Sex Industry Act 2019* to decriminalise the sex industry. While registration was debated, the NT government decided to not re-introduce registration of individual sex workers. This was due to the NT government's recognition that registration forces sex workers to choose between breaching sex industry regulation or risking a lifetime of stigma which can impact every facet of sex workers' lives from finding future employment prospects to custody disputes.⁶ Registration has been recognised as impinging on the human rights of sex workers and a failure in every jurisdiction where it has been implemented.

⁴ Sex Work (Fees) Regulations 2014, Consumer Affairs Victoria, April 2014, page 5.

⁵ Burgess, K. (31 July 2018). Major changes for Canberra sex industry get green light. *The Canberra Times* Retrieved on 25/03/20 from <https://www.canberratimes.com.au/politics/act/major-changes-for-canberra-sex-industry-get-green-light-20180731-p4zump.html>.

⁶ NT Department of the Attorney-General and Justice. (March 2019). *Discussion Paper: Reforming Regulation of the Sex Industry in the Northern Territory*. Retrieved on 25/03/20 from <https://haveyoursay.nt.gov.au/regulationsexindustry>. Pg 13.

Unnecessary and onerous restrictions on private sex workers including home based sex workers.

Victoria restricts private workers to only operating with one other worker to be in compliance with the law, and makes it functionally impossible to work from home while in compliance with the law, due to the onerous requirements to do so. This means that in order to work in compliance with the law, private workers must go to other locations such as clients' homes or hotel rooms. Private sex workers should not be restricted from working alone from their own premises, or with other workers in their own premises, which is often done for their safety, to share costs, to reduce isolation and to enable peer support. Private sex workers who are not in a management or employment relationship to each other can legally work together in Tasmania, NZ and in some parts of NSW without negative legal or amenity impact. In NZ, up to four sex workers can work together in a co-op style workplace.

Private sex workers who are not unnecessarily restricted on where and how they can work alone or with other sex workers reported greater flexibility, improved work health and safety (WHS), reduced overheads and a greater sense of security. In states where there are onerous restrictions directed at sex workers who are working with other sex workers, they have reported frequent police entrapment, harassment and arrest. These private sex workers report being forced to work longer hours in order to cover the costs of operating and reduced control over their work and safety strategies. Not all private sex workers want to work with other sex workers. However, they should not be subject to entrapment and criminalisation if they do.

Planning requirements for sex work premises

In Victoria, brothels are regulated by local councils. This means brothels are required to attain a planning permit from their local council and comply with the requirements outlined in the *Planning and Environment Act 1987* (Vic). Each council has different criteria for brothels to meet in order to attain and keep their council permit. For example, some councils have restrictions on the hours and location that brothels can operate. Some councils outright prohibit brothels from all types of residential areas and restrict them to isolated, industrial areas. The *Sex Work Act 1994* (Vic) also states that no more than 6 rooms in a brothel may be used for sex work.⁷

Private sex workers who are operating from home are required to be 100 metres away from any home and 200 metres away from any church, school, hospital, place of worship, children's services centre or any place where children spend time regularly.⁸ In the central business district bounded by Spring Street, Flinders Street, Spencer Street and Latrobe Street, private sex workers who are operating from home would need to be 50 metres away from the nearest residence.⁹ The area must also be zoned industrial. These restrictions are not grounded in evidence or concern for the health and safety of sex workers, rather they stem from a desire to exclude sex workers from the community.

Restricting sex workers to isolated industrial areas is a risk to the safety of sex workers. Issues have been highlighted by sex workers forced to work in industrial zones or other isolated areas where they have no access to public transport, poor lighting and no amenities. This risk is exacerbated for the large number of sex workers who work at night. Sex workers strategically choose the location of our workplaces based on access to essential services, public facilities including public transport, access to clients, visibility, lighting and safety. Zoning of sex industry businesses to isolated, poorly lit,

⁷ *Sex Work Act 1994* (Vic), Section 74(1d).

⁸ *Ibid.* Section 74(1b)

⁹ *Ibid.* Section 74(1c)

under resourced and unsafe areas undermines sex workers' safety. There is also no evidence to support the value of segregating sex industry businesses or sex workers to restricted areas.

Street based sex work

The *Sex Work Act 1994* (Vic) makes it an offence to 'solicit or accost any person or loiter in a public place' for the purpose of sex work¹⁰, criminalising all street-based sex work. Street-based sex workers are among the most visible, policed, and misunderstood sex workers. Although street-based sex work makes up a tiny proportion of sex work in Victoria and Australia, street-based sex workers endure the most severe policing, penalties, and regulations. Street-based sex workers' safety, rights and ability to access essential services and implement critical safety and harm reduction strategies at work is severely undermined by criminalisation. The criminalisation of street-based sex work :

- Forces street-based sex workers to operate covertly to avoid detection by the authorities as the work they do is regarded as criminal activity.¹¹
- Creates significant barriers for street-based sex workers to report crime or exploitation to the police in fear that reporting will, in turn, result in charges being laid against them.
- Forces street-based sex workers to take greater risks to avoid detection, such as working alone, only at night, and in poorly-lit, isolated areas, increasing their vulnerability to violence.
- Forces sex workers to rush safety screenings and client negotiations to evade authorities.
- Creates barriers for outreach workers to deliver essential harm reduction programs, such as condom distribution and the needle and syringe program, as street-based sex workers are reluctant to use services in fear that it may lead to further discrimination and stigmatisation or being reported to the police.¹²
- Results in solicitation charges being recorded in street-based sex workers' criminal records which can greatly undermine street-based sex workers' access to alternative work, government assistance, or training opportunities.¹³
- Forces street-based workers into a cycle of being penalised for working, thus having to work more and take greater risks to pay the costs of penalties, often then leading to further penalties.¹⁴

Despite the hysteria, there is no evidence indicating that decriminalisation increases the size of the sex industry, including street-based sex work, the most visible and policed form of sex work. The evidence shows that street-based sex work remains stable in decriminalised sex industries. The NSW sex industry has been decriminalised since 1995. Evidence from the Kirby Institute has found that 'the NSW sex industry has not increased in size or visibility' since decriminalisation.¹⁵ The passage of the *Prostitution Reform Act 2003 (NZ)* decriminalised most forms of sex work with the exception of migrant sex workers. The impacts of decriminalisation on the sex industry, sex workers and the public were reviewed in the *2008 Report of the Prostitution Law Review Committee on the Operation of Prostitution Reform Act 2003*. This report also indicates 'that the number of sex workers in New

¹⁰ *Sex Work Act 1994*, Section 13.

¹¹ Albright, E., & D'Adamo, K. (2017). Decreasing human trafficking through sex work decriminalization. *AMA journal of ethics*, 19(1). Pg 123.

¹² Ibid.

¹³ Ibid. Pg 124.

¹⁴ Ministry of Justice. (2008). *Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003*. New Zealand: New Zealand Government. Pg 130.

¹⁵ Donovan, B., et al. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Retrieved on 25/03/20 from

https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012.pdf. Pg 7.

Zealand has not increased as a result of the passage of the PRA [Prostitution Reform Act 2003]¹⁶ and endorses the findings of another study that found 'the numbers of street-based sex workers have remained stable since the enactment of the PRA'.¹⁷

Overall, it is essential that Victoria achieve the *full* decriminalisation of all forms of sex work, including street based sex work. As noted, this is consistent with the Victorian ALP policy platform. Decriminalisation of street based sex work will remove the immense harms experienced by street based sex workers as a direct result of criminalisation, and is a vital step towards freedom from stigma and discrimination.

Regulation and enforcement

In Victoria, the police are a key regulator of the sex industry. The Sex Industry Coordination Unit (SICU) are responsible for investigating breaches to sex industry regulation, such as brothels that are operating in breach of council regulations, and private sex workers unable to comply with registration requirements. Enforcement is also carried out by other parts of Victoria Police. Police in Victoria are known to raid sex worker workplaces under the guise of investigating trafficking or 'illegal brothels' and release poorly de-identified footage of sex workers during these raids to media outlets, greatly undermining sex workers' privacy and trust with the justice system.

When police are positioned as monitors and enforcers of sex industry regulation, sex workers are deterred from accessing justice for fear of being surveilled, fined, and even deported. These barriers to accessing justice are exacerbated for sex workers experiencing compounding marginalisation, such as migrant sex workers or those operating outside of the licensing and registration framework, as well as sex workers living with HIV.

One of the major drivers for decriminalisation in NSW was the findings of the Wood Royal Commission showing 'a clear nexus between police corruption [in the NSW Police Force] and the operation of brothels'.¹⁸ Since the decriminalisation of the sex industry, including brothels, in NSW there has been no evidence of organised crime within the sex industry. The *NSW Government Response to the Brothel Inquiry* rejected the re-introduction of a licensing component and greater police involvement in the regulation of sex work in NSW as it 'risks creating similar outcomes to re-criminalising sex work'¹⁹, such as increased police corruption and reduced access to legal, health and support services for sex workers.

In a decriminalised sex industry, police continue to have the same powers to investigate crime and prosecute offenders, as is the case for investigating crime in other industries. Removing police as the main monitors and enforcers of sex industry regulation will mean that sex workers can interact with and report crime to police without fearing sex work related prosecution. In this way, decriminalisation removes some of the barriers to justice for marginalised communities.

¹⁶ Ministry of Justice. (2008). *Report of the Prostitution Law Review Committee on the operation of the Prostitution Reform Act 2003*. New Zealand: New Zealand Government. Pg 29.

¹⁷ Ibid. Pg 16.

¹⁸ New South Wales Government. (1997). *Royal Commission into the NSW Police Service: Final Report- Corruption (Vol. 1)* Retrieved on 25/03/20 from <https://www.pic.nsw.gov.au/Report.aspx?ReportId=100>. Pg 13.

¹⁹ Minister for Innovation and Better Regulation. (2016). *NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels*. Sydney: Parliament of NSW Retrieved on 25/03/20 from <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governmentresponses>. Pg 3.

Regulation of sex work advertising

There are specific regulations pertaining to sex work advertising listed in the *Sex Work Act 1994* (Vic) and *Sex Work Regulation Act 2016* (Vic). These laws prohibit sex workers from describing our services when advertising, using specific words (such as ‘masseur’, ‘remedial’ or ‘any other words that state or imply that the business provides massage services’), broadcasting or televising our ads, and advertising for other sex workers.²⁰ When doing print advertising, such as in the paper, advertisements with photographs are restricted to only showing our head and shoulders and the photograph must be no larger than 18cm by 13cm.²¹ While online advertisements can show our bodies, the depiction of any ‘frontal nudity’ or ‘sexual act or simulated sexual act’ is prohibited.²² The *Sex Work Act 1994* (Vic) also allows councils to make discretionary regulations on the ‘size, form and content of advertisements for sex work services’ and can prohibit particular forms of advertising in their area.

These restrictions on what and how sex workers can advertise are arbitrary and illogical. Standard advertising restrictions should apply to sex worker ads instead of these unworkable restrictions. Sex workers often will not want to include a head shot in their advertising for obvious privacy reasons and should not be restricted in how we describe our services. The restrictions on advertising details of specific services are not based in evidence, nor do they have any demonstrable positive impacts on sex worker occupational health and safety. If anything, these restrictions represent a barrier to proper negotiation of services with prospective clients.

In Victoria, sex services businesses and independent sex workers cannot advertise for sex worker staff or coworkers. Sex workers need to be able to advertise safely and transparently. Sex services businesses should be able to advertise transparently for employees just as other legal businesses. As defined under the *Fairwork Act 2009*, transparency in advertising positions for employment as a sex worker must be clear before people apply for the work, to ensure employees are protected from:

- adverse action
- coercion
- undue influence or pressure
- misrepresentation.

Promotion of health

Mandatory Sexual Health Testing

Victorian sex workers must undergo 3 monthly mandatory sexual health testing and provide certificates as proof of compliance with the testing regime. *The Eighth National HIV Strategy* and *The Fourth National Sexually Transmissible Infections Strategy* explicitly identifies mandatory testing of sex workers as a key barrier to evidence-based prevention, and access to testing and healthcare

²⁰ *Sex Work Act 1994* (Vic), Section 17.

²¹ *Sex Work Regulations 2016* (Vic), Section 11 (8).

²² *Ibid.* Section 11(5).

services.²³²⁴ ²⁵ Mandatory testing also places an unnecessary burden on sexual health clinics which are already beyond capacity. The cost of over-testing is high - screening sex workers for HIV every 12 weeks costs \$4mil for every one HIV infection averted.²⁶

Mandatory testing of sex workers is considered a rights violation by a number of international human rights organisations, such as by the United Nations Human Rights Office of the High Commissioner for Human Rights and UNAIDS. In Victoria, and in Australia more broadly, mandatory testing has negative consequences for sex workers' confidentiality, human rights and industrial rights.

Mandatory sexual health testing relies on and reinforces the harmful 'vectors of disease' stereotype, which baselessly frames sex workers as a risk to the wider public, fuels sex work stigma, and is used to justify discriminatory practices. This can impact sex workers as members of their communities, be weaponised by abusive partners or other family members, and can negatively shape medical practitioner attitudes, including in contexts unrelated to sex work or sexual health, negatively impacting care outcomes.

Sex workers undertake education in sexual health and safer sex both as peer educators within their own community and with clients. This is reflected not only in low STI and HIV rates for sex workers in Australia, but in high uptake of safer sex practices. Sex workers have maintained low rates of STI and BBVs and high rates of condom use across Australia, with no reportable differences between migrant and non-migrant sex workers. In fact, rates of STI and BBV transmission among sex workers is often less than or equal to that of the broader community. For these reasons, mandatory testing is recognised as a harmful and costly practice that provides no discernable benefits.

Mandatory Condom Use Laws

The *Sex Work Act 1994* (Vic) states that sex workers and clients must use 'condoms or other appropriate barriers' for sex work that involves 'vaginal, anal, or oral penetration or another activity'.²⁷

Mandatory condom use is based on the assumption that without legal intervention, safer sex practices will not be implemented. Research demonstrates that there are high rates of condom use amongst sex workers, including migrant sex workers, in jurisdictions that do not legally mandate sex workers to use condoms. For example, *the Sex Industry in NSW: a Report to the Ministry of Health* study found that sex workers were approaching 100% condom use in Sydney brothels with no differences for migrant sex workers.²⁸ However, as mandatory condom use laws are difficult and

²³ Department of Health. (2018a). *Eighth National HIV Strategy 2018-2022*. Retrieved on 25/03/20 from [http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf). Pg 22.

²⁴ Department of Health. (2018b). *Fourth National Sexually Transmissible Infections Strategy 2018-2022*. Retrieved on 25/03/20 from [http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/STI-Fourth-Nat-Strategy-2018-22.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/STI-Fourth-Nat-Strategy-2018-22.pdf). Pg 22.

²⁵ Jeffreys, E., et al. (2012). Mandatory testing for HIV and sexually transmissible infections among sex workers in Australia: a barrier to HIV and STI prevention. *World Journal of AIDS*, 2(03), 203.

²⁶ Wilson, D. P., et al. (2010). Sex workers can be screened too often: a cost-effectiveness analysis in Victoria, Australia. *Sexually transmitted infections*, 86(2).

²⁷ *Sex Work Act 1994* (Vic), Section 18(a)

²⁸ Donovan, B., et al. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Retrieved on 25/03/20 from https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012.pdf. Pg vi.

costly to enforce, they often lead to the entrapment of sex workers by police and creates barriers to sex workers accessing health and justice services.

The implementation of sex worker peer education programs has been central in the maintaining low rates of STIs and BBVs amongst sex workers. Peer educator programs in Australia were instrumental in persuading brothel managers and workers to adopt safer sex practices. Condom use in brothels rose from under 11% of sexual encounters to over 90% between 1985 and 1989 and high rates of condom use has been consistently maintained by sex workers since and the health of sex workers improved commensurately.²⁹

Sex workers with HIV are criminalised.

Section 19 Permitting infected sex worker to work in a brothel etc. of the Sex Work Act 1994 (Vic) explicitly criminalises sex workers with an STI, including HIV, from operating in the regulated sex industry.

Criminalisation of sex workers with HIV:

- violates sex workers' human rights and is state-sanctioned workplace discrimination. Criminalisation violates sex workers' right to privacy and confidentiality, right to free choice of employment and just and favorable conditions of work, and equal protection and treatment before the law.
- forces sex workers to operate covertly, creating barriers to accessing essential targeted supportive, legal and health services. Where sex workers are operating outside of the regulated sex industry and have less access to formal legal protections, there are greater barriers for sex workers to enforce workplace conditions, such as implementing safer sex practices.
- creates disincentives for all sex workers to test and know our HIV status as a positive HIV result can lead to instant exclusion from the regulated sex industry, unemployment, stigma and discrimination, and in the instance that we need to keep working, criminal prosecutions, incarcerations and fines.
- compromises our medical confidentiality, making it difficult to roll out targeted HIV responses to sex workers with HIV. Fear of criminal investigations and having our confidentiality breached creates barriers for sex workers with HIV to disclose our HIV status and sex work, reducing health professional's ability to comprehensively assess our health needs. In the 2008 National Needs Assessment of Sex Workers Living with HIV, a number of participants stated that disclosing sex work and HIV status led to very poor treatment and harassment by health and support care workers.³⁰

Workplace safety and wellbeing

CAV sets out the Occupational Health and Safety (OHS) and Cleaning Guidelines for all licensed sex work premises. It calls for licensees to ensure that all 'employees, independent contractors, freelance or casual staff' of the premise are provided with:

- a healthy and risk-free environment.
- measures to maintain physical and psychological safety.

²⁹ Ibid. Pg 11.

³⁰ Scarlet Alliance, & AFAO. (1999). *Unjust and Counter-Productive: The failure of government to protect sex workers from discrimination*. Retrieved on 25/03/20 from <http://www.scarletalliance.org.au/library/unjust-counterproductive>.

- opportunities to participate in assessing workplace risks or making decisions on health and safety issues affecting sex workers.
- support on following procedures relating to workplace injuries.

Despite the existence of the guidelines, the licensing and registration system in Victoria undermines the ability of sex industry businesses to implement them. As highlighted above, a significant proportion of sex industry businesses are operating outside of the regulated sex industry. These businesses are often forced to invest in short term plans aimed solely at evading detection. Additionally, these businesses are discouraged from investing in long term plans to maintain OHS standards as keeping sufficient safer sex tools on the premise, and investing in suitable facilities (such as installing adequate showers and toilets, reception and break areas, and safe access into and out of the sex work premise) could be used against businesses as evidence of their 'illegal' operation.

The current licensing and registration system is incompatible with implementing effective OHS standards. In NSW, brothels are decriminalised and regulated through standard business, planning and industrial codes. Equitable and fair local planning provisions that are consistently applied provides sex industry businesses with greater clarity and certainty about the council's expectations of sex service premises, including OHS expectations. This encourages businesses to invest in long term plans to maintain compliance of council regulation, including maintaining optimal OHS standards, rather than investing in short-term plans aimed solely at evading detection.

The Victorian licensing system actively undermines safety at work for brothel and agency based sex workers, by giving disproportionate power to sex work business owners and operators, therefore denying sex workers control over our working environments, access to labour rights instruments (WorkSafe, Fair Work Work Ombudsman etc), the ability to choose and move freely between workplaces, and adequately funded peer only sex worker services. When as sex workers we have few workplace options open to choose from, our ability to organise effectively, have bargaining power regarding workplace conditions, and exercise control over our work is dramatically reduced. Decriminalisation would produce new ways to work: in small collectives together with no boss, for example, as is allowed in New Zealand. Workers who still chose to work in larger brothels would have more choices of where to work, and therefore more leverage around negotiating work conditions, organising formally or informally, and accessing work safety mechanisms and processes.

Non-consensual sex work

Australia's human trafficking and slavery offences are listed in *Division 270 and 271 of the Criminal Code 1995 (Cth)*. It criminalises:

- slavery;
- servitude;
- forced labour;
- deceptive recruiting;
- forced marriage;
- trafficking in persons;
- domestic, child and organ trafficking; and
- debt bondage.

Australia's human trafficking laws apply to all industries, not just the sex industry. In 2012 the Australian human trafficking policy response moved to remove the almost sole focus on sex work in human trafficking and slavery legislation by repealing the requirement to prove a commercial sexual element to the exploitation. Since the broadening of human trafficking legislation to encompass all

forms of trafficking, the number of referrals for exploitation in industries other than the sex industry has been steadily growing. The most recent *Trafficking in Person Report: The Australian Government Response 1 July 2015 – 30 June 2016* indicates that 130 of the 169 of the referrals related to forms of human trafficking outside of the sex industry.³¹

Victorian Police are responsible for investigating and enforcing human trafficking laws as well as investigating and enforcing breaches to sex industry regulation. *The Sex Work Act 1994* (Vic) grants police powers of entry and inspection to any licensed sex service premise without the need for a warrant.³² For unlicensed sex industry premises, power of entry without a warrant is granted in certain circumstances.³³

The current Victorian sex industry regulation undermines human trafficking prevention efforts as it creates an underclass of sex industry businesses who are unable to meet the onerous requirements of the licensing and registration system. Barriers are created for sex workers operating in these businesses to access support services and justice, as sex workers fear that using services or reporting crime to the authorities may result in surveillance of our workplaces or being charged. There is a large body of evidence that indicates that decriminalisation is essential to creating an environment to combat human trafficking in the sex industry. This is because decriminalisation increases sex workers' access to workplace rights, legal, health and support services, bilingual peer educators, and has proven to reduce organised crime and police corruption.

Additionally, contrary to protecting sex workers, providing police with discretionary powers to over-police and compliance check sex service premises in the guise of investigating trafficking deters sex workers from seeking support, including legal and health assistance for fear that detection by the authorities will result in deportation, increased policing of our workplaces, and increased immigration scrutiny and prosecution. The Scarlet Alliance Migration Project, staffed and managed by migrant sex workers and with input from the wider migrant sex worker community, has reported that contact with Department of Immigration and Border Protection officers has often resulted in increased policing of their workplace, heightening tensions between migrant sex workers and the authorities and further deters sex workers from seeking assistance.

Over-policing, compliance checking and sex industry raids in the guise of anti-trafficking have been counterproductive in effectively preventing trafficking as it threatens to 'destabilise sex worker communities and drive sex workers underground, increasing vulnerability and risk for all sex workers, disrupting HIV and STI prevention efforts, impeding access to services, and severing relations with service providers.'³⁴ Sex workers need labour rights and human rights-based approaches to human trafficking that address the circumstances that create trafficking and prioritise the needs, agency and self-determination of victims over criminal prosecutions and increased surveillance. They address labour exploitation through a focus on prevention, industry rights, civil remedies, statutory compensation, and equitable access to visas, migration channels and support.

6. Other key points

³¹ The Interdepartmental Committee on Human Trafficking and Slavery (ICHTS). (2016). *Trafficking In Person: The Australian Government Response 1 July 2015 – 30 June 2016*. Canberra: Commonwealth of Australia. Pg 4.

³² *Sex Work Act 1994* (Vic), Section 62.

³³ *Ibid.* Section 64.

³⁴ Steen, R., et al. (2015). Trafficking, sex work, and HIV: efforts to resolve conflicts. *The Lancet*, 385(9963). Pg 1.

'Illegal brothels'

It is often argued by licensed brothel owners and anti-sex worker lobbyists that there are more than 500 'illegal brothels' in Victoria. This is patently untrue. In the report 'Working in Victorian Brothels' (Pickering et al, 2009), unlicensed brothels were estimated at between 7 and 40. In an academic study published in 2010, entitled 'Estimating the number of unlicensed brothels operating in Melbourne' (Chen et al, 2010) it was estimated that there were between 13 and 70 unlicensed brothels in Melbourne. The study is significant as in that utilised both analysis of newspaper advertisements and visits to establishments.

In 2014 Consumer Affairs Victoria (CAV) published a report ('Sex Work Fees Regulations 2014: Regulatory Impact Statement') that stated:

"There is no reliable estimate of the scale of the illegal sex work industry in Victoria. Estimates of illegal brothels in a 2009 research paper ranged from 7 (according to regulatory and enforcement officers) to 40 (according to sex workers themselves), while estimates of the number of people that engaged in illegal private work (including private escort work) ranged from 100 to 450."

It has been recognised by government that the sex industry "...is generally regarded as being in the mature stage of its life cycle and even in decline" (quoted from the same CAV report), so there is no reason to suspect that the figures from these reports would have dramatically changed since the studies were conducted due to any potential increase in the size of the sex industry in Victoria.

Taking all of this into account and looking at the overall body of research in this area it would be fair to say that prior research about unlicensed brothels in Victoria has shown the number of unlicensed brothels to be estimated as between 7 and 70.

The 'illegal brothel' moral panic is profoundly harmful to sex workers working in unlicensed premises. These workers often experience multiple forms of marginalisation and are at greater risk of police and state violence. The police raids on unlicensed premises that are the result of this panic can result in trauma, violence, harassment, fines and deportation. While it may serve licensed brothel owners to protect their monopoly on the industry, it is profoundly harmful for sex workers. Any suggestion that decriminalisation in Victoria retain any element of licensing or the Sex Work Act is antithetical to decriminalisation. Decriminalisation has a very specific meaning and it cannot and should not be used to refer to regulatory systems that continue to criminalise any kind of sex work.

Anti-discrimination protections

Sex workers currently face significant stigma and discrimination in Victoria. Being identified as a sex worker can have harmful implications, and these may result from having sex worker status documented in a number of ways including:

- Registration of sex workers
- Medical records where sex worker status is recorded (due to disclosure of sex worker status, including through mandatory STI/HIV testing)

- Contact with Victoria Police where a sex worker's personal information and sex worker status is recorded
- Interactions with outreach or support services where sex worker status is recorded
- Through 'outing', being exposed as a sex worker either inadvertently or maliciously
- Convictions due to sex work – either retained prior to the licensing system, through current street-based sex work, or due to sex work that is non-compliant with the licensing system

As a result, sex workers experience a range of direct and indirect, personal and systemic discrimination in many areas. These include, but are not limited to:

- advertising sex industry services;
- purchasing goods and services;
- accessing banking and other financial products and services;
- securing housing and accommodation;
- criminal record discrimination;
- custody disputes;
- legal processes;
- policies and practices;
- employment; and
- over-policing, police violence and harassment³⁵

In Victoria, under the 'Equal Opportunity Act 2010' there is limited protection for "lawful sexual activity",³⁶ but this excludes those sex workers whose work is still criminalised (street based sex workers and those working outside the licensing system). Even for sex workers with theoretical access to this protection, anti-discrimination laws are often inaccessible, as utilising them requires 'outing' oneself as part of the proceeding, being able to afford associated costs (legal costs, lost earnings), and bearing negative mental health impacts. Pursuing protections may even result in media attention. Additionally, the *Equal Opportunity Act 2010* (Vic) explicitly singles out sex workers as an exception to allow accommodation providers to lawfully discriminate against sex workers.

Full decriminalisation of all forms of sex work in Victoria is essential to reducing the discrimination and stigma faced by all sex workers, much of which is either caused directly or exacerbated by the licensing system, via the monitoring and surveillance of sex workers operating both within and outside of the legal framework. This is particularly crucial for sex workers whose work is criminalised, and workers who are marginalised in multiple ways. Anti-discrimination legislation that protects all sex workers will be a crucial element in supporting the implementation of the full decriminalisation of sex work.

7. Further reading and reliable research

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³⁶ *Equal Opportunity Act 2010* (Vic), Section 6 Attributes.

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