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**20 July 2020**

Thank you for the opportunity to submit into the Review into the Decriminalisation of Sex Work.

Scarlet Alliance, Australian Sex Workers Association is the peak national body representing our membership of individual sex workers, and sex worker networks, groups, projects and organisations from around Australia since 1989. Through our objectives, policies and programs, Scarlet Alliance aims to achieve equality, social, legal, political, cultural and economic justice for past and present workers in the sex industry.

Scarlet Alliance is a leader when it comes to advocating for the health, safety and welfare of workers in Australia's sex industry. Through our work and that of our membership, we have very high access to sex workers and sex industry workplaces in the major cities and many regional areas of Australia.

Scarlet Alliance has played a critical role in informing policy through work with governments and the health sector, both in Australia and internationally, on issues affecting sex workers in the Australian sex industry.

To inform this submission Scarlet Alliance in partnership with Vixen Collective have conducted extensive consultations with a broad representation of Victorian sex workers.

Please find our submission attached. If you have any questions relating to our submission or require any further information, please do not hesitate to contact, CEO Jules Kim at

[REDACTED]

Regards,

[REDACTED]

Jules Kim.

## Executive Summary

The Victorian sex industry is subject to a strict licensing and registration system that is governed by the *Sex Work Act 1994* (Vic), *Sex Work Regulations 2016* (Vic) and the *Public Health and Wellbeing Act 2008* (Vic). There are also a number of other federal and state-based laws and policies that the sex industry must abide by which cover:

- occupational health and safety.
- employment.
- discrimination and harassment.

The Victorian licensing and registration system have created a two-tiered sex industry where a small percentage of the industry can meet the onerous compliance requirements while the majority of the industry is forced to operate outside of the legal framework. Licensing and registration impinge on sex workers' safety, limits sex workers' choices over our work environment and exacerbates power imbalances between sex workers and sex industry owners and operators. It is also costly to enforce, has been specifically named as a barrier to sex workers' health, and violates our human rights. In addition, when police are positioned as monitors and enforcers of sex industry regulation, sex workers are deterred from accessing justice as using the services of the police can result in surveillance or being shut down, fined, and even deported.

Scarlet Alliance and Vixen Collective conducted five group consultations, a targeted telephone interview, and a large online survey with Victorian sex workers to investigate the impact of the existing licensing and registration model on sex workers ability to control their workplace situation and access their full human and labour rights. We consulted sex workers from across the sex industry, including street-based sex workers, brothel-based sex workers, massage parlour workers and independent sex workers. Sex workers who are migrants, are trans and gender diverse, and of Aboriginal and Torres Strait Islander origin participate in our consultation process. In addition, we consulted sex workers who were forced to operate outside of the licenced sex industry. This submission is informed by the responses provided by these sex workers as well as existing reliable research.

Scarlet Alliance welcomes the review into the decriminalisation of sex work in Victoria. The full decriminalisation of sex work ensures sex industry businesses are regulated in the same way as other businesses and subject to a range of existing laws and regulatory mechanisms, making for a highly regulated and transparent sex industry. Decriminalisation improves sex workers' occupational choices by supporting autonomy, control, workplace health and safety (WHS), and industrial rights. Decriminalisation will mean sex workers can report crime to the police without fear of prosecution. A decriminalised system amplifies opportunities for outreach, magnifies capacities for peer education, supports sex worker self-determination, maximises compliance, increases transparency and minimises discrimination. There is an accumulating body of evidence globally and locally supporting the full decriminalisation of sex work as it ensures sex workers access to our human rights.

Decriminalisation is the removal of specific criminal laws targeting the sex industry, including those in the *Sex Work Act 1994* (Vic) and *Sex Work Regulations 2016* (Vic). Licensing, registration and the criminalisation of parts of the sex industry is incompatible with decriminalisation and will create significant impediments to accessing our basic human rights. Scarlet Alliance strongly assert that:

- Sex industry businesses should not be singled out to undergo special licensing and registration processes. Instead, they must be regulated through standard business, planning, and industrial codes.
- Councils need to be provided with training and education that is conducted in partnership with Vixen Collective and Scarlet Alliance to ensure the intent and benefits of decriminalisation are understood by all government agencies involved in the planning process and to clarify their role in a decriminalised framework.
- Registration of independent sex workers must be repealed.
- Up to four independent sex workers without a management or employment relationship must be able to operate from the same premise without being subject to the same requirements as larger sex industry businesses.
- Sex industry businesses should not be zoned. Sex industry business, including sole operator businesses, must be treated as legitimate businesses that are regulated by appropriate planning provisions.
- Small owner operated brothels, also referred to as home-based sex workers, should not be subjected to registration conditions not required of other home occupations.
- Street-based sex workers urgently need to be decriminalised.
- Police must be removed as the main monitors and enforces of sex industry regulation to ensure sex workers in Victoria can report crime to the police without fear of potential prosecution.
- Sex industry advertisements must be regulated by standard advertising regulations.
- Mandatory 3-monthly sexual health testing of sex workers and mandatory condom use laws needs to be repealed.
- Sex workers with HIV need to be decriminalised.

## Business Licensing and Registration

**The licensing and registration system in Victoria limits sex workers' choices and impinges on our safety and control over our working environment.**

Victoria's licensing and registration system has created a two-tiered sex industry where a small percentage 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 show 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.

Licensing regimes force sex workers to make decisions about who we work with, the location, type and form of our workplaces based on the licensing regime rather than our individual health and safety needs. The onerous requirements sex industry operators are forced to comply with does not prioritise sex workers' health and safety or empower workers. Rather, the singling out of the sex industry for onerous and restrictive requirements that other industries are not subject to sends the message that sex workers are fundamentally different to other workers and are therefore not entitled to the same workplace rights. In addition, the licensing system limits the number of 'legal' sex industry workplaces sex workers can operate in, reducing sex workers ability to choose and move freely between workplaces. This in turn acts to give disproportionate power to sex industry owners and operates by creating barriers for sex workers to access existing mechanisms to redress workplace issues and reduces our bargaining power regarding workplace conditions. In addition, the licensing model creates major barriers for sex workers who are forced to operate outside of the

regulated sex industry to access our workplace rights and essential services as sex workers fear that reporting issues or accessing services will result in increased surveillance, our workplaces being shut down, fined or even deported. As highlighted by a sex worker:

“they [the Victorian sex industry regulation] make it harder to work in a way that suits me. and it’s often harder to fight for better conditions at a brothel too if they know it’s hard for us to work for ourselves.”<sup>1</sup>

*The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* assert that the licensing of sex work should not be regarded as a viable legislative response and is a ‘threat to public health’.<sup>2</sup> The *Eighth National HIV Strategy* and the *Fourth National Sexually Transmissible Infections Strategy* explicitly listed ‘criminalisation, licensing, [and] registration’ as significant barriers to implementing public health strategies within the sex industry.<sup>3,4</sup>

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 and brothel manager schemes was \$1,664,086 compared to \$899,560 in revenue. This equates to 54% cost recovery.’<sup>5</sup>

Moral panic regarding the proliferation of ‘illegal’ brothels, including ‘illegal’ massage parlours, has been used by some to advocate for more stringent licensing and registration requirements and increased compliance checking and surveillance of sex industry workplaces. It is also being used to justify entrapment of individual sex workers and raids of sex industry workplaces in the guise of ‘cracking down on illegal brothels’. However, these types of responses to brothels that are operating outside of regulation is harmful to sex workers. They often result in individual sex workers being charged with sex industry offences, fined, harassed, and deported. It creates a climate of distrust with the authorities creating further barriers for sex worker operating in unlicensed brothels and massage parlours to access essential services and justice.

Retaining a licencing and registration component to regulating sex industry businesses is incompatible with the decriminalisation of the sex industry. To ensure sex workers are afforded the same rights and protections as other workers, specific criminal laws that single out and target the sex industry must be repealed and sex industry businesses, including massage parlours, need to be regulated in the same manner as many other businesses. Sex industry businesses then have a legal obligation to comply with a number of different laws and agencies, enabling a more transparent sex

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<sup>1</sup> Comment by Victorian sex workers during the Scarlet Alliance and Vixen Collective “Review into the Decriminalisation of Sex Work” consultations.

<sup>2</sup> Donovan, B., et al. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Retrieved on 25/04/20 from [https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP\\_NSW-Sex-Industry-Report-2012./pdf](https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012./pdf). Pg 7.

<sup>3</sup> 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.

<sup>4</sup> Department of Health. (2018b). *Fourth National Sexually Transmissible Infections Strategy 2018–2022*. Retrieved on 25/04/20 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.

<sup>5</sup> Sex Work (Fees) Regulations 2014, Consumer Affairs Victoria, April 2014, page 5.

industry. Where brothels and massage parlours are decriminalised, police continue to have the same powers to investigate crime and prosecute offenders, same as investigating crime in other industries. Under decriminalisation, sex workers are also provided with greater accessibility to various existing mechanisms to redress workplace issues as sex workers can use these mechanisms without fearing that reporting will result in our workplaces being subject to increased surveillance, shut down or criminalised.

In NSW, brothels are not required to undergo special licensing and registration processes and are regulated through standard business, planning and industrial codes. In response to *the NSW Brothel Inquiry Report*, the NSW Government rejected the recommendation to introduce a licencing component to the regulation of NSW brothels as it 'risks creating similar outcomes to re-criminalising sex work' and recognised that decriminalisation is 'the best way of protecting sex workers and maintaining a more transparent sex work industry'.<sup>6</sup>

### **The licensing system undermines the implementation of occupational health and safety standards.**

While the Consumer Affairs Victoria sets out Occupational health and Safety (OHS) Standards and Cleaning Guidelines for all licenced workplaces, the licensing and registration system directly undermines the implementation of these standards and guidelines. As highlighted above, the existing licensing system has resulted in a portion of the sex industry being forced to operate outside of the regulation. These businesses are actively discouraged from investing in long term plans of maintaining OHS standards as keeping sufficient safer sex tools on premises, 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. Research has demonstrated that sex workers access to occupational health and safety and support, legal, and health services is significantly reduced in jurisdictions where brothels are criminalised compared with NSW where brothels are decriminalised.<sup>7</sup> Further effective WHS Guidelines must be developed in consultation with sex worker organisations and available translated in key community languages.

### **Local councils need support to implement equitable and fair brothel planning provisions.**

Allowing local councils to apply planning controls for sex service premises gives the local council and the community an opportunity to consider the scale and potential impact of each premises. Councils in NSW provide evidence that sex industry businesses can be regulated and integrated effectively. However, a critical aspect of implementing decriminalisation effectively involves ensuring that appropriate training and education is provided to all involved in the planning approval process for sex industry businesses.

The NSW sex services 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 service premises complying with council requirements, with corresponding

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<sup>6</sup> Minister for Innovation and Better Regulation. (2016). NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels. Retrieved on 25/04/20 from <https://www.parliament.nsw.gov.au/ladocs/inquiries/1703/Government%20Response%20-%20Inquiry%20into%20the%20Regulation%20of%20Brothels.pdf> Pg 3.

<sup>7</sup> Donovan, B et al., (2010). The sex industry in Western Australia: a report to the Western Australian Government. *National Centre in HIV Epidemiology and Clinical Research*, University of New South Wales, Sydney.

benefits to council operations, the local community and health service providers'.<sup>8</sup> Equitable and fair local planning provisions that are consistently applied provides sex industry businesses greater clarity and certainty about the council's expectations of the business. It also means sex industry businesses are more likely to invest in long term plans to maintain compliance of council regulation, including maintaining optimal occupational workplace health and safety standards, rather than invest in short-term plans aimed solely at evading detection.

Additionally, *the NSW Government Response to Legislative Assembly Inquiry into the Regulation of Brothels* also emphasised the importance of councils being provided with 'additional assistance, such as educational briefings' to 'assist councils to make sound development assessment decisions around sex services premises from a public health perspective'.<sup>9</sup> Scarlet Alliance strongly recommends that training and education be conducted in partnership with Vixen Collective and Scarlet Alliance to ensure the intent and benefits of decriminalisation are understood by all government agencies involved in the planning processes and to clarify their role in a decriminalised framework.

## Zoning

### **Zoning of sex industry businesses to restricted areas impinges on sex workers safety and is unnecessary.**

In Victoria, 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 a different set of 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 mandate that sex industry businesses 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.<sup>10</sup> 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.<sup>11</sup> Brothels are additionally prohibited from having no more than 6 rooms.<sup>12</sup> There are some brothels that exist in Victoria that are larger than 6 rooms, but they have been established before 1995.

Sex workers indicated that restricting their workplaces to isolated, industrial areas is major barrier to maintaining their safety. They highlighted that the current zoning system forces sex workers to choose between working legally in industrial zones or other isolated areas and working in an area

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<sup>8</sup> Sex Services Premises Planning Advisory Panel (2004). Sex services premises: planning guidelines. NSW: NSW Department of Planning. Pg ii.

<sup>9</sup> Minister for Innovation and Better Regulation. (2016). NSW Government Response to the Legislative Assembly Inquiry into the Regulation of Brothels. Retrieved on 25/04/20 from <https://www.parliament.nsw.gov.au/ladocs/inquiries/1703/Government%20Response%20-%20Inquiry%20into%20the%20Regulation%20of%20Brothels.pdf>. Pg 9.

<sup>10</sup> *Sex Work Act 1994* (Vic). Section 74(1b)

<sup>11</sup> *Ibid*. Section 74(1c)

<sup>12</sup> *Sex Work Act 1994* (Vic), Section 74(1d).

that we are able to establish a safe work environment. Being forced to work in industrial zones or other isolated areas where they have no access to public transport, poor lighting, and no amenities is exacerbated for the large number of sex workers who work at night. Sex workers indicated they have serious concerns for their safety as a result of being forced to work in isolated industrial areas:

“When I leave the brothel where I work I have to walk to the nearest taxi accessible pickup point, a few hundred metres away in the dark, often at 4am. I am nervous about who may be waiting outside when I leave to follow me.”

“The brothel I work at is isolated, far from public transport and very poorly lit, surrounded by worksites making it incredibly dangerous for providers to get to and from, and impossible to get to and from work without receiving harassment or assault from nearby workers or drivers.”<sup>13</sup>

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, under resourced and unsafe areas undermines sex workers’ safety.

The current zoning requirements are not grounded in evidence or concern for sex workers health and safety. Instead, they push sex workers to the margins, making them more vulnerable, in an effort to push the industry out of sight and exclude sex workers from the community. Zoning of sex industry businesses is incompatible with full decriminalisation and there is also no evidence to support the value of segregating sex industry businesses or sex workers to restricted areas. Treating sex industry businesses as legitimate businesses and applying appropriate planning provisions has a number of tangible positive effects for sex workers and the community. As highlighted above, implementing equitable and fair local planning provisions that are consistently applied encourages compliance and improves the health, safety and rights of sex workers.

## Private sex workers

***Registration of private sex workers fails to achieve its intended outcomes and is counterproductive to sex workers’ safety.***

In Victoria, sex workers who are operating privately or with up to one other person are required to be registered with the Business Licensing Authority (BLA) and obtain a Sex Work Act (SWA) number to comply with the law. The registration process requires private workers to provide the BLA with their legal details, including legal name and address, all other 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 available 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’.<sup>14</sup> While sex workers can get our information ‘deregistered’ on request, a ‘historical record’ of our registration remains. The ‘historical record’ cannot be destroyed or deleted. It contains all the particulars of the initial registration, such as our name, date of birth, address, business name and address, and any other amendments that have been made to our record. This permanent ‘historical record’ is kept with the BLA and can be

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<sup>13</sup> Comments by two different Victorian sex workers during the Scarlet Alliance and Vixen Collective “Review into the Decriminalisation of Sex Work” consultations.

<sup>14</sup> *Sex Work Act 1994* (Vic), Section 24(3).

accessed by the same people as the initial registration record. The BLA also retains the authority to refer relevant matters, which can include our 'historical record', to other additional authorities, such as the police, WorkCover, the Australian Taxation Office, the Department of Immigration and Border Protection, CAV and any government other body.

Registration of independent sex workers and linking our legal name to sex work in a permanent register is a major concern for sex workers in Victoria. Many sex workers indicated that registration limits their workplace options as those who do not want to register are forced to continue operating for existing businesses which provides sex workers with less control over our workplace conditions compared to operating independently. Sex workers also indicated that in order to protect their privacy, registration has forced them to operate outside of the licensing framework. As a result, while registration was intended to increase sex workers safety, the exclusion of sex workers from the regulated sex industry creates significant barriers to accessing legal, health and support services.

Other states and territories' move to repeal the requirement for individual sex workers to register due to the recognition that registration fails to achieve its intended outcomes and is counterproductive to sex workers' safety highlights the urgent need for Victoria to catch up on implementing best practice laws and policies that protect sex workers. In August 2018, the ACT repealed the requirement for private sex workers to register because it was recognised that registration is a policy failure as only 14 independent sex workers had *ever* registered in the ACT. The low numbers of private sex workers registered indicates the majority of workers in this sector are operating unregistered.<sup>15</sup>

In the NT, the government passed the *Sex Industry Act 2019* (NT) 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.<sup>16</sup> Registration has been recognised as a barrier to human rights of sex workers and a failure in every jurisdiction where it has been implemented.

### ***Restrictions on private sex workers are unnecessary and onerous***

In Victoria, the *Sex Work Act 1994* (Vic) restricts private workers to only operating with one other worker to be in compliance with the law. Private sex workers operate with other workers to increase our safety, share costs, reduce isolation and enable peer support. Private sex workers who are not in a management or employment relationship to each other can legally work together in NT, 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. Sex workers from these jurisdictions have reported greater flexibility, improved work health and safety (WHS), reduced overheads and a greater sense of security.

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<sup>15</sup> 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>.

<sup>16</sup> 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.



Where private workers are restricted in how they can operate, sex workers have reported frequent police entrapment, harassment, and arrest. These private 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 or will always work with other sex workers. However, in the instance that a private worker should choose to do so, they should not be subject to entrapment and criminalisation as a consequence. For these reasons, Scarlet Alliance strongly support sex industry regulation that allow up to four sex workers without a management or employment relationship to be able to operate from the premise without being subjected to the same requirements as brothels.

***Home-based sex workers should not be subjected to requirements not asked of other home occupations.***

In Victoria, private sex workers who are operating alone or with one other sex worker are legally classified as a 'small owner operated brothel'. Private sex workers who are operating from a home-based premise, such as an apartment or house, are required to apply for a permit from the Planning Department of their local council. Home-base private sex workers must then provide their approved planning permit, the name and address of the owner of the building that they will be working out of, and a letter of approval from the owner to the BLA to operate 'legally'. This does not provide any benefit to home-based private sex workers and due to the high levels of stigma and discrimination creates risks and dangers for sex workers.

Working from home provide workers greater control over our working conditions as sex workers have "'increased control and freedom', 'increased financial independence', 'flexibility of work hours', 'personal autonomy' and 'increased self-esteem' when compared to working in large commercial sex industry premises."<sup>17</sup> Enforcing unnecessary and discriminatory regulations creates an inevitable underclass of 'illegal' sex workers who are unable to comply with restrictive and invasive permit and registration systems and who face significant barriers to accessing essential support services and justice, such as reporting crime to the police.

Sex workers indicated that the requirement to get a letter of approval from the landlord and register with their local council raised serious privacy issues and made it virtually impossible to operate from home 'legally'. Sex workers highlighted that the virtual impossibility of 'lawfully' working from home meant that they were forced to provide services at a location determined by the client. This creates significant barriers for sex workers to control their workplace environment and implement safety strategies. On the other hand, sex workers who prioritised their safety over complying with sex industry regulation are forced to operate outside of the regulated sex industry.

Scarlet Alliance is aware of some concerns around misconceptions that there will be a proliferation of 'brothels' if private worker is redefined to include more than two sex workers operating from the same premise and private workers are able to operate from home. However, research from NSW has also demonstrated that there are minimal amenity and safety impacts to the community as a result of home-based private sex workers. A study which surveyed the perception of 401 residents in two neighbourhoods in NSW found that, despite residents assumptions around public nuisances and private sex work, '43% of respondents were unaware of living or were uncertain that they lived near a sex premise, while a further 30% were aware but noted no impact'.<sup>18</sup> The study found that 'those

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<sup>17</sup> Prior, J., & Crofts, P. (2015). Is Your House a Brothel? Prostitution Policy, Provision of Sex Services from Home, and the Maintenance of Respectable Domesticity. *Social Policy and Society*, 14(1). Pg 132.

<sup>18</sup> Hubbard, P., et al. (2013). Noxious neighbours? Interrogating the impacts of sex premises in residential areas. *Environment and Planning A: Economy and Space*, 45(1). Pg 8.

who had been aware of sex premises operating in their neighbourhood for a number of years appeared less likely to report negative impacts than those who had more recently become aware of their existence, suggesting that established sex premises had acted to mitigate any negative local impacts, or simply that residents had realised that sex premises created few problems'.<sup>19</sup> As highlighted by one sex worker:

“I was a private worker interstate working out of my suburban house for years. No one even noticed over the space of years, and I was able to work with every safety precaution I felt was necessary.”<sup>20</sup>

## Street-based sex workers

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 work<sup>21</sup>, criminalising all street-based sex work. Street-based sex workers are the most visible, policed, and misunderstood group of 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’ ability to access essential services and implement critical safety and harm reduction strategies at work is severely undermined by criminalisation. As highlighted by a Victorian street-based sex worker:

“When you’re scared about ‘is this guy a psychopath?’ you need more time to suss them out. Things have to be done really hastily the way it is now with our work being illegal.”<sup>22</sup>

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.<sup>23</sup>
- Creates significant barriers for street-based sex workers to report crime 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 been reported to the police.<sup>24</sup>

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<sup>19</sup> Ibid. Pg 14.

<sup>20</sup> Comment by Victorian sex workers during the Scarlet Alliance and Vixen Collective “Review into the Decriminalisation of Sex Work” consultations.

<sup>21</sup> *Sex Work Act 1994*, Section 13.

<sup>22</sup> Comment by Victorian sex workers during the Scarlet Alliance and Vixen Collective “Review into the Decriminalisation of Sex Work” consultations.

<sup>23</sup> Albright, E., & D’Adamo, K. (2017). Decreasing human trafficking through sex work decriminalization. *AMA journal of ethics*, 19(1). Pg 123.

<sup>24</sup> Ibid.

- 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.<sup>25</sup>
- Being subject to soliciting fines results in street-based workers forced to work more frequently, for longer hours, and take greater risks.<sup>26</sup>

Street-based sex work must be decriminalised. 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.<sup>27</sup> The passage of the *Prostitution Reform Act 2003 (NZ)* decriminalised most forms of sex work in NZ, 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 Zealand has not increased as a result of the passage of the PRA [Prostitution Report Act 2003]'<sup>28</sup> 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'.<sup>29</sup>

It is essential that criminalisation of street based sex work is repealed to achieve the *full* decriminalisation of all forms of sex work. This is consistent with the Australian Labour Party's commitment to decriminalise 'all sex work in Victoria'.<sup>30</sup> The decriminalisation of street based sex work will ensure immediate reduction in barriers for street based sex workers to access essential services and rights. It is a vital step towards enhancing safety and enabling protection from stigma and discrimination for street based sex workers.

## Police

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, the use of drugs and alcohol on premises, and condom use. Enforcement is also carried out by other parts of the Victorian Police. Undercover police dress as sex workers and clients to make soliciting arrests. Police in Victoria are also known to raid sex worker workplaces in 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. Sex workers indicated that raids, compliance

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<sup>25</sup> Ibid. Pg 124.

<sup>26</sup> 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.

<sup>27</sup> Donovan, B., et al. (2012). *The sex industry in New South Wales: a report to the NSW Ministry of Health*. Retrieved on 25/04/20 from [https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP\\_NSW-Sex-Industry-Report-2012.pdf](https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012.pdf). Pg 7.

<sup>28</sup> 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.

<sup>29</sup> Ibid. Pg 16.

<sup>30</sup> Victorian Labor. (2018). *Victorian Branch Australian Labor Party: Platforms 2018*. Retrieved from <https://www.viclabor.com.au/wp-content/uploads/2018/07/Platform-2018-Web.pdf>. Pg 87.

checking, and police as enforcers of sex industry regulation has created a climate of distrust and fear of the authorities:

“police use to turn up at these venues quite frequently and in one place asked for ID... these experiences furthered my feelings that the police were not there to help us, but catch us out.”

“I have a process if I do not reply to my buddy [when I see a client] then to call the police, but I am very apprehensive about them actually doing that because I am not sure what the response [from the police] would be... I’m scared to call the police if something goes wrong in a booking.”

“I was a victim of crime in another state, and I reported it to police... Yet I absolutely would not have reported that same incident had it happened in Victoria: I would have been too scared of some kind of trouble (even though I was, to my knowledge, working legally) given the maze of confusing regulations, and the Sex Industry Coordination Unit had a terrible reputation for being more concerned with compliance than safety.”<sup>31</sup>

When police are positioned as monitors and enforcers of sex industry regulation, sex workers are deterred from accessing justice as using the services of the police can result in surveillance or being shut down, fined, and even deported. These barriers to accessing justice are exacerbated for sex workers experiencing compounding marginalisation, such as migrant sex workers or sex workers who are operating outside of the licensing and registration framework.

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’.<sup>32</sup> Since the decriminalisation of the NSW sex industry, there has been no evidence of organised crime within the sex industry. The *NSW Government Response to the Brothel Inquiry* rejected the recommendation to re-introduce greater police involvement in the regulation of the sex industry as it ‘risks creating similar outcomes to re-criminalising sex work’<sup>33</sup>, 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, same as investigating crime in other industries. Removing police as the main monitors and enforcers of sex industry regulation will mean that sex workers in Victoria can report crime to police without fearing prosecution.

### **Enforcement powers required to address criminal activity in the sex work industry, including coercion, exploitation, debt bondage and slavery**

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<sup>32</sup> New South Wales Government. (1997). *Royal Commission into the NSW Police Service: Final Report-Corruption (Vol. 1)* Retrieved on 25/04/20 from <https://www.pic.nsw.gov.au/Report.aspx?ReportId=100>. Pg 13.

<sup>33</sup> 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 25/04/20 from <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=185#tab-governmentresponses>. Pg 3.

First, the existing licensing system directly undermines anti-trafficking efforts as it pushes sex industry businesses who are not in compliance with the licensing regime underground. As a result, sex workers operating in these businesses are deterred from accessing support services as reporting exploitation may result in charges being laid against them for breaching sex industry regulation or worse, result in deported. There is a plethora of international and local research that indicate that decriminalisation is an essential component in preventing 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.

The Global Alliance Against Trafficking in Women explicitly advocates for “the decriminalisation of sex work, for labour rights for sex workers, and the conceptual de-linking of sex work and trafficking in persons”.<sup>34</sup> This is due to compounding research that indicate that criminalisation creates a complex matrix of impediments to implementing evidence based anti-trafficking prevention strategies and for sex workers access to support. Decriminalisation is also supported by United Nations, UNAIDS, UNFPA, UNDP, Amnesty International, International Labor Office (ILO), World Health Organisation, Lancet Medical Journal, Global Network of Sex Work Projects, Asia Pacific Network of Sex Workers, and within Australia's National BBV and STI Strategies.

Additionally, providing police with discretionary powers to over-compliance check and investigate sex industry workplaces creates a climate of distrust between the authorities and sex workers and deters sex workers from using support services to redress exploitative workplace conditions. Sex workers need labour rights and human rights-based approaches to human trafficking that address the circumstances that create trafficking and prioritises the needs, agency and self-determination of victims over criminal prosecutions and increased surveillance. A rights-based approach would address labour exploitation through a focus on prevention, industry rights, civil remedies, statutory compensation, and equitable access to visas, migration channels and support.

## 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.<sup>35</sup> The *Sex Work Act 1994* (Vic) additionally 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 should not be restricted in how we describe our services. Sex workers indicated that the arbitrary advertising restrictions are discriminatory, unnecessary, and reduces their ability to utilise the advertising process to screen clients and enhance their safety:

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<sup>34</sup> Comments by three different Victorian sex workers during the Scarlet Alliance and Vixen Collective “Review into the Decriminalisation of Sex Work” consultations.

<sup>35</sup> *Sex Work Act 1994* (Vic), Section 17.

“Advertisements in Victoria are vague and it would save a lot of admin if I were allowed to explicitly state what I'm comfortable with during a booking with a client.”

“Sex workers need to be able to explain what they actually do, and workers interstate have been doing so, in language appropriate to the particular forum used, without overly offending delicate sensibilities for years.”

“Victoria is a scary place for me to work because I can't describe my services and because I have quite strong boundaries about what I do and don't offer and in Victoria because I can't list those, it's much more likely that I will get to a booking before I realise what the client is expecting something that I do not offer which is a problem I don't have in NSW where I can be open about those things.”<sup>36</sup>

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 must be clear before people apply for the work, to ensure employees are protected from:

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

These protections in advertising for employees apply equally to sex workers. The restrictions on advertising for staff or coworkers purely on the basis of sex work is unnecessary and discriminatory. Scarlet Alliance strongly assert that specific restrictions placed on sex work advertisement be repealed.

## Promotion of Health

**Mandatory sexual health testing of sex workers is expensive, unnecessary, and considered a rights violation.**

Victorian sex workers must undergo 3-monthly mandatory sexual health testing and provide certificates as proof of our 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 services.<sup>37,38</sup> This is because mandatory testing “endorses a false sense of security in the form of a ‘certificate’, which, due to window periods, doesn't actually confirm a sex worker's sexual health status, but instead just indicates that the sex worker has participated with the states mandatory

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<sup>36</sup> Comments by three different Victorian sex workers during the Scarlet Alliance and Vixen Collective “Review into the Decriminalisation of Sex Work” consultations.

<sup>37</sup> Department of Health. (2018a). *Eighth National HIV Strategy 2018-2022*. Retrieved on 25/04/20 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.

<sup>38</sup> Department of Health. (2018b). *Fourth National Sexually Transmissible Infections Strategy 2018-2022*. Retrieved on 25/04/20 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.

testing regime.<sup>39</sup> Mandatory testing also places an unnecessary burden on sexual health clinics which are already beyond capacity. Sex workers in need of quick access to sexual health services are particularly marginalised by mandatory testing regimes. The cost of over-testing is high. It is estimated that screening sex workers for HIV every 12 weeks costs \$4mil for every one HIV infection averted.<sup>40</sup>

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

Decades of research indicate that sex workers have maintained low rates of STI and BBVs and high rates of condom use across Australia, including in states without mandatory testing with no reportable differences between migrant and non-migrant sex workers. Mandatory testing is recognised as a harmful and costly practice that provides no discernable benefits.

### **Mandatory condom use laws are difficult and costly enforce and are unnecessary.**

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'.<sup>41</sup> 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.<sup>42</sup> However, as mandatory condom use laws are difficult and 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.<sup>43</sup>

### **Sex workers with HIV must be decriminalised.**

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<sup>39</sup> 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.

<sup>40</sup> 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).

<sup>41</sup> *Sex Work Act 1994* (Vic), Section 18(a)

<sup>42</sup> 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](https://kirby.unsw.edu.au/sites/default/files/kirby/report/SHP_NSW-Sex-Industry-Report-2012.pdf). Pg vi.

<sup>43</sup> *Ibid*. Pg 11.

Section 19 and 20 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.<sup>44</sup>

The ACT moved to repeal the discriminatory restrictions against sex workers and clients with HIV or STI's from receiving or providing sexual services provided they take precautions to prevent transmission. This change was welcomed by sex workers and advocates in the ACT as it is supported by evidence, recognises that sex workers offer a range of services which do not always include a risk of transmission, recognises the advances in biomedical interventions and current epidemiology of HIV among sex workers in Australia and protects the rights of *all sex workers*. Sex workers indicated that the criminalisation of sex workers with HIV or a STI is discriminatory and fails to take into account advances in HIV prevention:

"Having HIV is not criminalised anywhere else but sex work, having a STI is not criminalised anywhere else but sex work."

"It's quite prohibitive, especially with HIV there's increasing evidence ... if you're undetectable, you're untransmissible .. which makes no sense that a HIV+ worker should be banned from working."<sup>45</sup>

The discriminatory provisions in Section 19 and 20 of the Act have the effect of making it impossible for people with HIV to legally work as sex workers. The prohibition on HIV-positive sex workers does nothing to protect public health, but rather forces HIV-positive sex workers to work illegally,

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<sup>44</sup> 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>.

<sup>45</sup> Comments by two different Victorian sex workers during the Scarlet Alliance and Vixen Collective "Review into the Decriminalisation of Sex Work" consultations.



potentially harming the HIV response by driving HIV underground. The protection of public health is best managed through the Public Health and Wellbeing Act 2008, which applies to all people in Victoria, rather than through the Sex Work Act.

## Anti-discrimination rights for sex workers

Sex workers experience a range of direct and indirect, personal, and systemic discrimination. These include, but are not limited to:

- when advertising sex industry services;
- when purchasing goods and services;
- when accessing financial services and banks;
- when securing housing and accommodation;
- criminal record discrimination;
- in custody disputes;
- in legal processes;
- in policies and practices;
- discrimination against friends, family and partners of sex workers
- in employment; and
- counterproductive police practices.<sup>46</sup>

Further, we experience state-sanctioned discrimination from governments, organisations and the public and suffer criminal record and HIV status discrimination because of the criminalisation of sex workers living with HIV. We experience regular and relentless vilification from media. This discrimination and vilification affects our personal lives, professional lives, families, health, wellbeing and working conditions

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 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.

In Victoria, sex workers are theoretically covered by anti-discrimination protection under the protected attribute 'lawful sexual activity'.<sup>47</sup> However, it has proven to be too narrow and restrictive in providing inclusive anti-discrimination coverage to Victorian sex workers. The criminalisation of large sections of the sex industry in those states have left many sex workers unable to access anti-discrimination protections, such as sex workers working in sex industry businesses operating outside

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<sup>46</sup> 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>.

<sup>47</sup> *Equal Opportunity Act 2010* (Vic), Section 6 Attributes.

of regulation, street based sex workers, and unregistered private workers to name a few. Additionally, the *Equal Opportunity Act 2010* (Vic) explicitly single out sex workers as an exception to allow accommodation providers to lawfully discriminate against sex workers.

Even for sex workers with theoretical access to protection under “lawful sexual activity”, anti-discrimination laws are often inaccessible as utilising them requires ‘outing’ oneself as part of the proceeding, have associated costs (legal costs, lost earnings), negative mental health impacts, and may even result in media attention. “Sex work” and “sex worker” must be a protected attribute within anti discrimination legislation enabling the full range of protections afforded to other protected attributes in the *Equal Opportunity Act 2010*. Additionally protections must extend to those who currently have or have previously held the protected attribute, associate with another person with the protected attribute, or are incorrectly assumed to possess the protected attribute.

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 and anti- vilification legislation that protects all sex workers will be a crucial element in supporting the implementation of the full decriminalisation of sex work.