



StarHealth
First for your Health & Wellbeing



**Submission to the
Decriminalisation of Sex Work Review – Victoria**

July 2020

Dear Committee Members,

Thank you for the opportunity to provide a submission for the Review into the Decriminalisation of Sex Work, Victoria.

Star Health understands the importance of this review in helping to inform state government legislation. Ultimately, decriminalisation will result in better protections and freedoms for sex workers in Victoria. The organisation believes that this is an important opportunity to help inform how the decriminalisation of the sex industry in Victoria will look.

Star Health is a major provider of primary health and community services across the inner and middle south of Melbourne. Our Resourcing Health and Education (RhED) team provides services for the sex industry across the whole of Victoria. The team provide site based and outreach services, in collaboration with relevant programs and agencies. Star Health is committed to respecting and reflecting the needs of the sex industry and actively promoting the rights of sex workers through the RhED team.

We have a strong focus on health equity, providing specialist expertise in engaging high risk and hard to reach populations. We engage in community building and health promotion activities to strengthen the health and wellbeing of our local communities.

Please find attached our submission to the review, which has been developed in consultation with sex workers.

If any aspect of this submission requires clarification, please contact me at the Star Health office on (03) 9525 1300.

Yours sincerely,



Kent Burgess

Acting Chief Executive Officer

Star Health

Introduction

Star Health supports the full decriminalisation of all forms of sex work in Victoria. This is based on evidence that decriminalisation results in the best health and social outcomes of all models of sex work regulation, and that there are positive flow-on effects for the broader community.

Star Health is a leading not-for-profit provider of primary health and community services in the inner south of Melbourne and surrounds. Operating from a social model of health, we provide a comprehensive range of holistic, wrap-around services including GP, dental, allied health, mental health, alcohol and other drugs, Indigenous health, aged care, homelessness and family violence. In working towards our vision of *Health and wellbeing for all*, Star Health has a strong focus on social justice, and specialist expertise in engaging, supporting and advocating for our most vulnerable community members, including those who work in the sex industry.

Star Health is one of the state-wide network of community health services registered under the *Health Services Act (1988)*. This network of community health providers covering the entire state deliver a comprehensive range of health programs in partnership with local communities. Community health services such as Star Health are a key part of the health system.

This submission outlines Star Health's response to key areas of the review, based on available evidence and observations of our 'Resourcing Health and Education' (RhED) team who work closely with sex workers, and advocate for their rights and freedoms.

Star Health makes the following recommendations to the review

1. **Definition of sex work** – the existing definition needs to be simplified and broadened to encapsulate what constitutes sexual service.
2. **The removal of the Sex Work Act** – The same rights and protections that apply to other professions and their clients should apply to sex workers.
3. **The purchase of sex not be an offence** - It is seen as an offence in European legal frameworks such as the Nordic model. Star Health does not support this.
4. **Remove the need for separate brothel licenses** - Brothels need to be covered by the same laws that regulate and protect other forms of business including: corporation, criminal, and occupational health and safety laws and council regulations.
5. **Victorian Equal Opportunity Act** - Sex workers in brothels, massage parlours and escort agencies must be protected by the Victorian Equal Opportunity Act.
6. **Stop using sex work specific regulations** - already existing legislation contained within The Crimes Act, Public Health and Wellbeing Act, Equal Opportunity Act and Occupational Health and Safety Act should be utilised to target individual behaviour that breaches legislation requirements, and that separate legislation to govern sex industry businesses specifically is not required.
7. **Training must be mandatory** - Managers of brothels, massage parlours and escort agencies must have consistent training and knowledge of regulations that impact their conduct, their relationship with employees and their responsibilities in providing safe, healthy workplaces.
8. **Zoning rules** - sex work premises, and those conducting business from home, need to meet the same requirements that are in place for other places of work, or home-based businesses.
9. **OH&S** – Independent Sex workers should be covered by Occupational Health and Safety regulations.
10. **Removal of in-call restrictions** – to protect the rights of sex workers.
11. **Remove the requirement to register with the government** – this requirement is unnecessary and invasive. All names currently associated with the SWA register should be removed.
12. **Remove duplication of legislation** – legislation contained in the Public Health and Wellbeing Act 2008 is sufficient.
13. **Implementation of training** – Thorough training needs to be provided to groups that interact with sex workers. Where possible, there should be peer representation in this training. This is best practice.
14. **Removal of discriminatory practices** – including mandatory testing for STIs, treatment of sex workers living with HIV, and migrant workers.
15. **Past criminal convictions** – These need to be revoked as they limit future opportunities for those with these convictions still on their record.
16. **Protect the rights of migrant workers** – they should not have to register
17. **Unionisation of the industry** – to protect pay grade entitlements and to help establish awards/align to existing awards.
18. **Include sex work in Worksafe Victoria's 2030 strategic response** – to protect the basic rights of those employed within the industry.
19. **Greater advocacy** – through peer led initiatives to empower, educate and share best practice.
20. **Greater access to Health Services** - The industry will be more broadly accessible to health services under decriminalisation.
21. **Avoid the creation of tolerance zones or safe zones** – instead provide health care services and harm reduction education to areas where street-based sex work occurs as there are already established street sex work areas in Victoria.

22. **Provide suitable amenities** - Councils need to ensure adequate facilities are provided, including: public toilets, hand washing facilities, water fountains, showers, NSP vending machines, safe and secure bins for disposal of used safer sex supplies and/or NSP equipment etc.
23. **Creation of targeted education programs** - for councils, police and other community groups
24. **Update the Public Health & Wellbeing Act 2008** - to remove the consequences for sex workers when a person is provided with or receives commercial sexual services and reasonable steps were not taken to ensure a prophylactic sheath or another appropriate barrier is used. Invest in public health and peer led education programs instead to maximise health outcomes for sex workers.
25. **Living with HIV** – repeal the legislation prohibiting sex workers living from HIV from working in the sex industry

Resourcing required

An increase in resourcing, through increased funding, will provide RhED the opportunity to proactively and assertively engage relevant communities. It will also allow for the needs of the communities to have their needs listened and responded to in an equitable manner, as well as ensuring activities and engagement are sustainable, for not only the present, but the future as well. Sex work decriminalisation will see major increases in demand for our services. Funding increases must account for this increase in demand.

Defining Sex work

Star Health uses the term sex work only in regard to consensual exchanges between adults.

The organisation believes that there is no need to have a specific Sex Work Act (SWA). The rights of sex workers and their clients should be protected by other existing business and consumer legislation. The current definition of sex work is too complex and specific; it needs to be simplified in order to encapsulate the breadth of what constitutes sexual service. The definition also needs to ensure it captures the digital age, so that protective measures are provided to workers within this area of the industry.

Context

(Terms of Reference 1: 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.)

(Terms of Reference 2: Stigma and discrimination against sex workers)

Current legislation does not: support the health and wellbeing of sex workers; align with contemporary occupational health and safety guidelines; enable best business practice, nor does it uphold human rights and anti-discrimination standards.

Sex work is a politically and socially contentious issue and this can be an obstacle to pragmatic law and policy reform. Star Health recognises the strength of evidence supporting an approach that: maximises the health and well-being of sex workers; their safety and working conditions; offers freedom of choice; protects the fundamental human rights of sex workers and supports a legal environment that is consistent with these priorities.

Criminalisation isolates street-based sex workers, forcing them into unsafe working practices and conditions. It diminishes their opportunities to access peer support groups and education. Criminalisation instils fear and may encourage sex workers to engage in risky sexual encounters to avoid interactions with police; this then poses the risk of elevating BBV and STI transmission.

The Sex Work Act and accompanying regulations have negatively impacted sex workers both directly and indirectly. Sex workers also identify other areas that have negative consequences on their work, health and well-being - including stigma and discrimination. The way the industry is regulated is burdensome; it is a cause of unwarranted stress that may harm the mental health of sex workers. It also places their safety at risk as they try to navigate restrictive legislation and unnecessary invasions into their privacy. Decriminalisation of the sex work industry will help to protect their human rights.

Any model of sex work legislation in Victoria needs to be based on the principle that sex workers are part of the community and that attempting to restrict sex work will not eliminate it. Sex work must be treated as a legitimate profession and provided the same respect and protections given to other occupations through regulation. Globally, many rights violations - including physical and sexual violence against sex workers by police and other state groups - are the result of climates of impunity.¹

Decriminalisation will allow acts of violence to be reported more freely as it will result in the removal of barriers that make disclosure challenging. *In 2015 Adrian Bayley raped five sex workers before raping and murdering Jill Meagher. Multiple sex workers identified Bayley as their attacker, however some did not trust police enough to give evidence. It is believed that others did report it to the police and received convictions, however Bayley was released on bail.*

It is important to note that in addition to legal barriers, stigma and discrimination affects sex workers' access to justice at all levels. When crimes are committed against sex workers and they report the incident to the police, their experience is often minimised and dismissed. Evidence also shows that perpetrators tend to receive lesser convictions. Only recently were the Victorian sentencing guidelines amended (*in 2016*) so as not to condone explicit discrimination against sex workers and erasure of their human rights. Decriminalisation would begin to allow workers to have greater confidence in reporting crimes against them to police, and access to justice.²

Importance of a harm reduction approach

A harm reduction approach to sex work minimises potential negative impacts of the sex industry on the community whilst enabling sex workers to gain greater control over their occupation. Respecting an individual's right to choose their employment as well as providing the means for them to work in the safest way possible minimises potential harms. It also reduces the need for sex workers to take unnecessary risks.

The harm reduction approach has served the health of the Victorian community well in the context of the prevention of HIV transmission. Through this approach, HIV transmission in the sex industry has been prevented from being a problem in Australia.³ The same approach should be applied to other aspects of the sex industry.

Recommendations

- 1. Definition of sex work** – the existing definition needs to be simplified and broadened to encapsulate what constitutes sexual service. The review should consult with sex worker organisations Scarlet Alliance or Global Network of Sex Work Projects to ensure that the definition is sex worker defined.
- 2. The removal of the Sex Work Act** – The same rights and protections that apply to other professions and their clients should apply to sex workers.

3. The purchase of sex not be an offence - It is seen as an offence in European legal frameworks such as the Nordic model. Star Health does not support this.

Regulatory Requirements

(Terms of Reference 3: Regulatory requirements for operators of commercial sex work businesses)

Regulation of brothels and escort agencies

Separate licensing of brothels needs to be discontinued. Brothels must be covered by the same laws that regulate and protect other forms of business, including: corporation, criminal, and occupational health and safety laws, as well as council regulations. In such an environment council permission would need to be obtained to operate a brothel. As a result, brothels and massage parlours that provide sexual services, need only apply to their local council - approval is subject to council regulation. The same assessment of suitability that exist for other local business would apply. Maintaining the current two-tiered licensing system, promotes discrimination and prejudices, reinforces stigma, and encourages illegal operations.

Sex workers in brothels, massage parlours and escort agencies must be protected by the Victorian Equal Opportunity Act. Operators and managers of brothel and escort agencies must be required to comply with this. People working in these businesses will be protected against discrimination based on gender and sexuality, race, mental illness, ability, sexual harassment, like other people participating in other areas of the Victorian workforce.

Managers of brothels, massage parlours and escort agencies must have the same level of training and knowledge of regulations that impact their conduct, their relationships with employees and their responsibilities in providing safe, healthy workplaces. This includes having a thorough knowledge of anti-discrimination, equal opportunity and occupational health and safety legislation. Employers need to ensure all public health measures are in place to protect the health and human rights of all staff, clients and the general community.

Sexual assault agencies such as CASA, RhED and peer organisations are well placed to conduct this training in collaboration with other peak industry bodies - where required. RhED will continue to be an asset in this space as it is the funded health promotion agency to the sex industry; however, it will require more resourcing given the changing landscape that would unfold in a post decriminalised environment. This factors in the growth in the number of sex work businesses that become legal. These businesses will become more accessible and require training to be compliant.

Planning and zoning requirements

Star Health believes that sex work premises and residential places of work, would need to meet the same requirements that are in place for other businesses, including home-based businesses. They would need to comply with noise restrictions, parking requirements and obscene exposure laws (Summary of Offences Act 1966).

Current planning and zoning requirements often restrict licensed sex work premises to industrial areas. This can create safety issues such as lack of lighting, isolation from public transport and other amenities, increased vulnerability and exclusion from community.

Current planning requirements for independent sex workers require them to provide out-calls to clients only, thus creating safety issues.

People who work in a co-operative situation with another person, have greater ability to control the conditions under which they provide sexual services. Independent sex workers should be permitted to work from a nominated business address to comply with occupational health and safety standards. These locations - like any other business - would be expected to comply with all relevant local restrictions and regulations and must adhere to legal, tax and insurance requirements. Such changes would ensure sex workers have the power to choose, and as a result have control of, their work environment.

Any concerns about sex workers conducting their business from a nominated address that relate to child protection, noise pollution, illicit drugs or violence are currently addressed by comprehensive legislation which provides protection to all members of the community.

Under the New Zealand and New South Wales decriminalisation models, independent sex workers are permitted to work from any nominated business address; Star Health supports this stance.

Regulation of independent sex workers

The current restrictive regulations for independent sex workers need to be removed. These include:

Removal of in-call restrictions: Currently independent sex workers who are operating legally are entering an unfamiliar space, controlled by the client; this has the potential to put the sex worker at risk of violence. For occupational health and safety reasons, a self-employed person must be able to provide their own secure and compliant working environment. This will protect their right to privacy and discretion and give them control over their own place of work. These restrictions unfairly burden and discriminate against people wanting to work privately; other small owner operated businesses - such as accountants and beauticians who work from home – are not required to meet such stringent regulations. As a result, there are unnecessary risks and stresses imposed upon sex workers who may work alone and provide services in a client's space.

Sex workers who work in a co-operative situation with another sex worker have greater ability to control the conditions under which they provide sexual services yet are discouraged to do so by these restrictions. They are classified as operating brothels if they choose to work in partnership with another worker – this should not be the case.

Remove the requirement to register with the government:

Due to the stigma and discrimination that sex workers experience from the general community, there is wide agreement from sex workers that they will choose not to register with any state or local government body. Enforcing registration will continue to create a two-tiered system and this will continue to minimise the safety of sex workers in that they will not report crime if they are working outside the legal industry.

The majority of Victorian sex workers do not register with the government due to: fears about their privacy; concern their travel may be restricted; fear of police checks and retribution; exclusion from working with children checks and so on. Though these anxieties may be unfounded these concerns are still legitimate as once registered with the government, there will always be a risk of privacy breaches. Under federal and state law the register can be accessed by the ATO, the Dept of Home Affairs, social welfare agencies and police.

Workers know that once registered, records will be permanently kept. Sex workers are also required to renew annually; for those working in such a transitory industry this proves challenging. Again, there are risks to workers privacy as renewal statements are mailed to home addresses. This may have an impact on relationships, including parents, partners and housemates. This imposition to register also fails to alleviate the stigmas associated with sex workers.

Case study: *Laura* approached RhED to complain about being discriminated against by a bank when she was registering her business. Laura had worked in brothels and for escort agencies, had travelled extensively around the world, choosing to work in countries where sex work was legal. Laura was now setting up as an independent worker. She had registered with the Business Licensing Authority and had approached her bank to set up merchant facilities. As sex work is legal in Victoria, Laura was surprised and "outraged" at this discrimination. Laura went to other banks and received similar treatment and then rang RhED for support around advocacy.*

These fears mean many workers do not register. As a result, they do not report criminal activity including violent behaviour (to them or others) for fear of being prosecuted for working outside the legislative framework. From a public health and wellbeing lens this means they are denied equitable access to justice and health services. Private sex workers must be given the same protections offered to other workers. This will see them protected by the same rules that protect workers in all other workplaces.

Therefore, Star Health calls for the removal of the requirement to register with the government, and the removal of all names currently associated with the SWA register.

Star Health believes it would be fair to expect sex workers to register as sole traders and declare income.

OH&S requirements must be considered if workers are using a private space to host clients. This will offer protection to members of the public from harm. Such regulations exist now for other forms of private business.

Business Compliance

The organisation believes that already existing legislation contained within The Crimes Act, Public Health and Wellbeing Act, Equal Opportunity Act and Occupational Health and Safety Act should be used to target individual behaviour that breaches legislation requirements. Specific legislation to govern sex industry businesses is not required.

Having a heavily regulated industry, with its own unique requirements, and consequences for breaches, further stigmatises sex workers and discriminates against them. Penalties already exist under current acts, and therefore, these should be extended to cover those who work in the sex industry. Failure to comply with legislation must result in the same consequences regardless of the industry. This means that consistency and equality is used to protect all in the community from violence, racism, sexism, public health issues, unsafe work practices etc.

Therefore, those working in the sex industry must be treated the same way as those working in other industries.

Regulation of advertising

(Terms of Reference 6: Appropriate regulation of sex work advertising)

Advertising should be regulated as per the general advertising standards that cover all adult content, including those that already govern various aspects of the pornography industry. It should be noted that online advertising can be viewed from anywhere in the world; current Victorian legislation is outdated in the context of web-based platforms that many sex workers utilise. Restrictive advertising practices should be removed. Consistency needs to be applied across the advertising industry in line with other adult based content.

Criminal offences

(Terms of Reference 4: Enforcement powers required to address criminal activity in the sex work industry, including coercion, exploitation, debt bondage and slavery)

Non-consensual sex is not an aspect of sex work; it is a crime. Human trafficking is also a crime. Human trafficking cannot be conflated with consensual sex work. Such crimes are enshrined in already existing legislation such as the Crimes Act and Modern Slavery Act 2018. If non-consensual sex work or human trafficking takes place within the context of the sex industry, this must be addressed within the existing legislation that covers all industries.

Sex trafficking and sex work are often conflated in the context of discussions around decriminalising sex work. Such discussions and views are harmful, and only work to strengthen already existing stigmas. Sex work is a legitimate occupation. Those working in the industry make informed choices. Where this is not the case, laws have been broken. For example, migrant sex workers may have chosen to work in the sex industry in Australia with debt bondage agreements in place. This becomes an issue for Migration Law and has implications for workers around their chosen place of employment. Labour rights are a more appropriate way to promote working conditions and health and safety for sex workers than the promotion of the criminalisation of sex work.

Case study: *Lilly* approached RhED with a complaint that a regulatory body was continually seeking to meet with her outside work. This had come about when the regulatory body had visited the brothel and taken mobile phone numbers from migrant workers. Lilly said that she was being asked to meet with the regulatory body outside the brothel. She assumed it may be to do with gathering information about how she and other migrant workers were brought into Australia. Due to visa issues and illegality of her work in her home country, she felt scared and approached RhED seeking assistance. RhED supported Lilly to report it to the brothel management and they pursued the complaint with the regulatory body.*

The Crimes Act needs to be updated to protect children from working in the sex industry. There should be no need to have separate legislation in the form of the Sex Work Act. The Crimes Act needs to protect everyone from exploitation and sexual violence.

Recommendations

- 1. Remove the need for separate brothel licenses** - Brothels need to be covered by the same laws that regulate and protect other forms of business including: corporation, criminal, and occupational health and safety laws and council regulations.
- 2. Victorian Equal Opportunity Act** - Sex workers in brothels, massage parlours and escort agencies must be protected by the Victorian Equal Opportunity Act.
- 3. Stop using sex work specific regulations** - already existing legislation contained within The Crimes Act, Public Health and Wellbeing Act, Equal Opportunity Act and Occupational Health and Safety Act should be utilised to target individual behaviour that breaches legislation requirements, and that separate legislation to govern sex industry businesses specifically is not required.
- 4. Training must be mandatory** - Managers of brothels, massage parlours and escort agencies must have consistent training and knowledge of regulations that impact their conduct, their relationship with employees and their responsibilities in providing safe, healthy workplaces.
- 5. Zoning rules** - sex work premises, and those conducting business from home, need to meet the same requirements that are in place for other places of work, or home-based businesses.
- 6. OH&S** – Independent Sex workers should be covered by Occupational Health and Safety regulations.
- 7. Removal of in-call restrictions** – to protect the rights of sex workers.

8. Remove the requirement to register with the government – this requirement is unnecessary and invasive. All names currently associated with the SWA register should be removed.

9. Follow advertising standards – existing advertising rules need to be applied to sex work industry advertising. Legislation needs to be updated to accommodate for digital platforms.

Community and Public Health

(Terms of Reference 6: The promotion of public health)

(Terms of Reference 2: Stigma and discrimination against sex workers)

Duplication of legislation already contained in the Public Health and Wellbeing Act 2008 must be removed. Such duplication results in mystifying the industry - it is seen in a negative light as it requires additional governing and policing. Having a Sex Work Act creates an otherness regarding the sex work industry. It detracts from the community seeing it as a legitimate form of work.

Training needs to be provided to any industry, or group, that interacts with sex workers. Thorough training and education must also be available to the broader community. Providing education to young people is crucial in challenging stigmas. With additional resourcing the RhED team could assist in designing and providing such training.

Peer representation in training sessions - of those working, or who have worked in the sex industry - is important. Such interaction will help demystify the profession and reduce barriers. The most successful stigma reducing programs are peer led, utilising professional expertise and lived experience to challenge prejudices.

Widespread awareness campaigns/resources should also be used to challenge unchecked discrimination both within and against the sex work industry. Any form of campaigning and training needs to identify that sex work is a legitimate vocation.

Past criminal convictions (such as loitering/soliciting) need to be revoked. These convictions limit future opportunities for travel, employment and rehabilitation. *The RhED Pathways team know of a sex worker who was unable to complete a child care diploma because she had a loitering charge from 7 years ago kept on her record.* (See the chart from Sex Work Law Reform Victoria which details the number of solicitation offences recorded against sex workers from 2005-2019⁴).

It should not be mandatory for sex workers to be tested for STIs. Research within the sex industry does not report higher rates of STIs than the broader community. Research also demonstrates that sex workers have high levels of health literacy and adopt safer sex practices in their work.⁵ Mandatory testing reinforces stigma and discrimination against sex workers. Mandatory health tests undermine health initiatives which encourage each individual to take responsibility for their own sexual health.

Instead, education should be provided to the whole community whereby individuals are responsible for their own sexual health care. The same expectations have been placed on the community because of COVID-19. It is possible to achieve it.

Existing regulations in the Public Health and Wellbeing Act that speaks to sex work settings include: provision and storage of condoms; use of condoms; refusal of service; information to sex workers and clients - all with accompanying penalties when contravened by client, management and worker. Full decriminalisation of the sex industry should remove the mandated requirement for sex workers to ensure that a prophylactic sheath or another appropriate barrier is used and to divert the regulatory resources required around enforcing this requirement into appropriate public health and peer education programs. Sex worker workplaces such as

brothels and escort agencies must continue to provide safer sex supplies to the workforce, and clients must continue to be subject to penalties and criminal prosecution if they refuse or remove safer sex equipment. This means the mandatory testing of sex workers can be stopped and replaced with voluntary testing. 'Laws requiring mandatory testing (along with registration) may actually drive sex workers away from health services.'⁶

Decriminalisation of sex work needs to also accommodate people living with HIV. With the advent of PrEP and HIV treatments, resulting in undetectable viral loads within the HIV+ community, it is discriminatory that sex workers living with HIV are criminalised when there are negligible public health risks from them carrying out their work safely. Modeling studies suggest that the decriminalisation of sex work would have the biggest impact on reducing HIV incidence among sex workers, yet a lack of policy changes limits the real-world evaluation of this intervention.⁷ Criminalisation creates barriers to access to healthcare and testing.

The rights of migrant workers also need to be protected. Currently, the requirement to register them with VEVO, exposes them to potential discrimination and other harms when returning to their home countries, especially if sex work is illegal or highly stigmatised in these countries. The New Zealand model criminalises migrant sex workers, excluding them from the benefits of decriminalisation, further marginalising and stigmatising this group. Star Health recommends avoiding the pitfalls of this model.

The New Zealand experience with decriminalisation shows that decriminalisation does not increase the size of the sex industry, but instead brings better access to justice, health and safety for sex workers. The Public Health Association of New Zealand has stated that the decriminalisation of sex work enables safer sex information and products in the industry, occupational health and safety standards, reduction of stigma and greater access to health care services and providers.⁸

Case Study: *Ashley* is a single mother of one who previously practised street-based sex work prior to the birth of her son. She lives in an Office of Housing property. She has identified needs around: mental health; financial struggles; NDIS support for herself and her son; support for her acquired brain injury; support with a chronic health condition (emphysema); support liaising with child protection and her son's school, and family violence.*

Ashley continually reported feeling marginalised and discriminated against when trying to seek support. Reports were made against her to child protection regarding her use of alcohol and her presentation of slurred speech. This is a known side effect of her acquired brain injury and methadone substitution therapy.

Ashley went to Family Court multiple times around guardianship of her son, where child protection raised her history as a sex worker. She was asked if she currently practised sex work; this information was irrelevant to the care of her son.

When child protection interviewed relevant parties about the level of care her son received, those conducting the interview disclosed the fact that she had worked in the sex work industry, along with her past drug use. They identified these as relevant factors.

During a family violence intervention order hearing, a respondent to a safety order she had applied for, also made reference to her past employment as a sex worker, deeming it relevant to her application against him - in order to attack her credibility as an applicant.

This is one of many examples of the outing of workers, and the prejudicing of their cases

Case Study: *Francis* attended an inner Melbourne GP clinic requesting a health certificate for work. The GP said they would complete one this time but advised her to go elsewhere for future certificates.*

Recommendations

- 1. Remove duplication of legislation** – legislation contained in the Public Health and Wellbeing Act 2008 is sufficient.
- 2. Implementation of training** – Thorough training needs to be provided to groups that interact with sex workers. Where possible, there should be peer representation in this training. This is best practice.
- 3. Removal of discriminatory practices** – including mandatory testing for STIs, treatment of sex workers living with HIV, and migrant workers.
- 4. Past criminal convictions** – These need to be revoked as they limit future opportunities for those with these convictions still on their record.
- 5. Protect the rights of migrant workers** – they should not have to register.

Workplace Safety

(Terms of Reference 2: Workplace safety including health and safety issues and stigma and discrimination against sex workers)

(Terms of Reference 7: 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.)

It is crucial that work is ongoing to reduce stigma and discrimination from affecting an individual's long-term plans and goals. Star Health supports a harm minimisation approach which involves improving the safety of the environment in which street sex work occurs and supporting the choices of street sex workers to either remain in or transition to another area of work within the industry or leave the industry altogether.

The sex work industry should be unionised in accordance with other industries. This would ensure pay grades are consistent and protected by awards. This should encompass all involved in the industry. Such protections would help the profession to be seen as legitimate. This would protect the rights of those working in the industry.

Sex work needs be included in Worksafe Victoria's 2030 strategic response. There needs to be clear and consistent working relationships between brothels, massage parlours, escort agencies and Worksafe Victoria. There needs to be enforcement of the three basic employee rights: the right to know, the right to participate and the right to refuse unsafe work. It is essential that the same level of protections that are afforded to other workplaces are extended to the sex industry.

Sex work information needs to be more widespread and readily available. This will help ensure sex workers and employers are familiar with their rights and what to do if these are breached. Training also needs to be provided for owner/operators, reception staff and sex workers on responding to sexual assault. Sexual assault includes stealthing (the non-consensual removal of a condom during otherwise consensual sexual contact, or a deliberate failure to use a condom, without the awareness of one's sexual partner, despite an agreement to use a condom being made),⁹ banning clients who participate in stealthing, or harass, threaten or are otherwise violent towards workers as well as clients who film workers without their consent. Owners need to be reassured/informed that banning clients and reporting sexual assaults are not going to negatively affect their business and that it is their responsibility to provide a safe working environment for sex workers which includes denying service to clients who have assaulted, threatened or abused any staff. There also needs to be employment and privacy protection for workers who need to report their employers for unlawful behaviour.

There needs to be support for advocacy within the sex work industry through peer-led initiatives which empower, educate and include the experiences of those undertaking this work.

Specialist services, in particular health and harm reduction education services, should be allowed greater access to those working within this industry. Services and strategies will be more effective and be able to provide greater support to sex workers if the industry is visible.

Sex workers need to feel empowered to disclose their work to other agencies, without fear of persecution. Such agencies include drug and alcohol, family violence, sexual assault, disability, mental and physical health, housing, education and training, social support and financial services and institutions. Such access is afforded to other members of the community. Evidence shows people who work in an underground or illegal setting will not access health and safety services.

Case Study: A client of the RhED Pathways team, who applied for access visits with her child, was granted supervised access only. It was raised in the courtroom that the client was a sex worker. The client feels strongly that this judgement of her ability to parent was biased by her chosen form of employment.

Recommendations

- 1. Unionisation of the industry** – to protect pay grade entitlements and to help establish awards/align to existing awards.
- 2. Include sex work in Worksafe Victoria's 2030 strategic response** – to protect the basic rights of those employed within the industry.
- 3. Greater advocacy** – through peer led initiatives to empower, educate and share best practice.
- 4. Greater access to Health Services** - The industry will be more broadly accessible to health services under decriminalisation.

Local Amenity and the location of premises

(Terms of Reference 5: Local amenity and the location of premises providing sexual services and street-based sex work)

Star Health advocates that street-based sex work should not be restricted to tolerance zones or safe zones, but instead be managed by providing health care services and harm reduction education to areas where street-based sex work occurs as there are already established street sex work areas in Victoria. Street sex work has declined dramatically in Victoria; police recorded only one solicitation charge against sex workers in 2019 - down from almost 500 offences 14 years ago.¹⁰ There is no evidence that decriminalisation of street-based sex work - without the creation of established zones - would lead to more street-based sex work occurring outside of already existing areas. The New Zealand model has demonstrated this.

The Prostitution Law Review Committee found:

The sex industry has not increased in size, and many of the social evils predicted by some who opposed the decriminalisation of the sex industry have not been experienced. On the whole, the PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously.¹¹

Councils need to ensure adequate facilities are provided, including: public toilets, hand washing facilities, water fountains, showers, NSP vending machines, safe and secure bins for disposal of used safer sex supplies and/or NSP equipment etc.

Councils should also consider lowered speed limits in known sex work areas to provide additional protection for workers, clients, residents and the broader community, due to an increase in traffic on the roads.

Other models should be explored where safe houses/spaces such as private car parks with no or minimal fees have been used (eg NSW, Germany).¹² Star Health is a proponent of a model where such spaces could be community health service run support facilities with the appropriate resourcing.¹³

Education programs should be conducted, which are peer led. These programs would target council, police and other community groups. Such training could help restore relationships and reduce stigma. This could also improve sex workers willingness to seek police assistance in emergency situations, as these programs could help build trust. It also means that sex workers may then become more likely to seek medical and emergency care when required.

Case Study: *Lisa* is a street-based sex worker who identifies as trans female and is sleeping rough in the St Kilda area. Lisa came to Australia because her home country was not safe for her as a transwoman. She faced varying forms of violence due to systematic discrimination. Her visa lapsed and despite attempting to connect with an immigration lawyer, she found it challenging to navigate the immigration system with English as her second language. Lisa was not aware of housing services, health services or legal services that could assist, and expressed concerns for her lack of documentation being a barrier to this support. She was also fearful of discrimination as a result of being a sex worker. She was also working without a visa. Lisa was not fully aware of her immigration status and without an address had missed vital government correspondence. Lisa had not had a medical check-up in over 4 years due to this; she experienced violence in and outside of sex work in Australia during her time here.*

Once Lisa was supported by community services, she received healthcare, temporary safe accommodation and legal support – they helped her to apply for a protection visa. She was diagnosed with multiple asymptomatic STI's and a blood borne virus. It is believed these were contracted during a sexual assault. These untreated conditions were forming potentially chronic health complications. They would also have been a barrier to passing the immigration health screening. Upon receiving care, she was treated and was able to liaise with support workers to contact her clients who may have been exposed to the STI's. Her health and awareness of the systems and services improved along with her confidence and wellbeing.

Lisa experienced intersectional discrimination and barriers to service access. LM would not report any crimes committed against her during this period of work for fear of being persecuted for street-based sex work, working without a visa, being in Australia without a visa and potentially being discriminated against for being trans and a sex worker.

Case Study: *Peta* is a driven and engaged student who works well with people and wishes to work in healthcare. She is currently engaged in training - completing a joint certification in aged care and disability support work. She has had difficulty getting a placement due to a loitering charge from over 10 years ago when she worked as a street-based sex worker. She has found it difficult to obtain clear and transparent information regarding how to remove this charge. She has been outed and forced to discuss her personal working history with her educational institution due to this and is concerned about employability despite doing well in her course.*

Recommendations

- 1. Avoid the creation of tolerance zones or safe zones** – instead provide health care services and harm reduction education to areas where street-based sex work occurs as there are already established street sex work areas in Victoria.

- 2. Provide suitable amenities** - Councils need to ensure adequate facilities are provided, including: public toilets, hand washing facilities, water fountains, showers, NSP vending machines, safe and secure bins for disposal of used safer sex supplies and/or NSP equipment etc.
- 3. Creation of targeted education programs** - for councils, police and other community groups.

Enforcement Powers

(Terms of Reference 4: Enforcement powers required to address criminal activity in the sex work industry, including coercion, exploitation, debt bondage and slavery)

RhED advocates for the Public Health and Wellbeing Act 2008 to remain, as it promotes and protects public health. STI's and other health concerns in relation to the sex industry should be contained within enforceable occupational health and safety codes. The Health and Wellbeing Act views safer sex practices as a responsibility for all sexually active people.

Currently, criminalisation results in fines, banning notices, court attendance and incarceration. This is resource intensive on the police, court and prison systems. Street based sex workers who use drugs are at greater risk of experiencing legal and health issues as a result of criminalisation, stigma and discrimination. Evidence suggests policing fails to reduce the size of the sex industry. "Experience in the region shows that punitive laws, policies and practices around sex work do not reduce the number of people buying and selling sex but they do form barriers to sex workers' access to services and they change the shape (venue, methods) of the sex industry in ways that increase vulnerability."¹⁴ Punitive Policing has the potential to damage relationships between sex workers and the police. At times sex workers may need the support of the police.

Under current New Zealand legislation, a person must not provide or receive commercial sexual services unless he or she has taken all reasonable steps to ensure a prophylactic sheath or another appropriate barrier is used. People who contravene this are liable on conviction to a fine not exceeding \$2000. RhED does not advocate for this legislation to exist mandating sex workers to ensure protective equipment is utilised in service delivery. Rather than investing resources in regulating this requirement, RhED believes that effective public health and peer led education campaigns would result in far better health outcomes for sex workers. To complement this, the removal of mandatory testing for sex workers from the legislation also needs to occur. Any regulations should account for contemporary prevention tools in addition to condoms such as PrEP, as well as contraception from a reproductive health perspective.

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The World Health Organisation's 45th World Health Assembly, to which all countries were a signatory, stated that "there is no public health rationale for any measures that limit the rights of the individual, notably measures establishing mandatory screening."¹⁵ Taking this into account, it is discriminatory to burden sex workers with the stigma of being a major risk of STI transmission, particularly when sex workers in Victoria do not have higher rates of STIs than the general community.

Recommendations

- 1. Update the Public Health & Wellbeing Act 2008** - to remove the consequences for sex workers when a person is provided with or receives commercial sexual services and reasonable steps were not taken to

ensure a prophylactic sheath or another appropriate barrier is used. Invest in public health and peer led education programs instead to maximise health outcomes for sex workers.

2. Removal of discriminatory practices – including mandatory testing for STIs.

3. Removing criminality – upon decriminalisation? sex work related crimes should be expunged from a criminal record.

4. Living with HIV – repeal the legislation prohibiting sex workers living from HIV from working in the sex industry.

Government Department Oversight

Areas of government that should be responsible for compliance and regulation and the powers required:

- **Local council** – for amenity/local business registration issues.
- **Victoria Police** – should only be responsible for criminal issues, not as regulators of the sex industry, however they will remain key stakeholders and will need to be fully across the sex industry in terms of responding to issues of violence and sexual assault in sex worker work spaces. The Sex Crimes Unit where the person does not have a personal relationship with the perpetrator are responsible for responding in relation to sexual assault against sex workers.
- **Worksafe Victoria** – currently have no authority to visit brothels unless complaint is made (complaints can be made anonymously but more information needs to be provided to workers in relation to their rights to a safe workplace as workers may not be aware of this).
- **Victorian WorkCover Authority**
- The sex industry needs to operate in accordance with the **Fair Work Act/Commission, Fair Work regulations, Privacy Act, Occupational Health and Safety Act** – the industry needs to be in accordance with any other labour trade in terms of regulatory oversight, and not singled out or perceived as more unsafe than other forms of work.
- **DHHS – Partner Notification Officers** – currently their role is to visit brothels and escort agencies once a year. This role could be restricted to ‘as needed’ in response to health issues and concerns rather than annual enforcement and compliance checks. Their role is not related to the policing and enforcement of sex workers.

COVID-19 and the importance of sex work as a legitimate occupation

COVID-19 has had a disproportionately negative impact on those involved in the sex work industry. Under the full Covid-19 restrictions the entire sex industry has been rendered illegal.

Sex workers who are working legally, including those who are registered may not declare income with the ATO, for a number of reasons already outlined in this submission. There are also those deemed to be working illegally because they are not working in licensed brothels, massage parlours and escort agencies.

Those working in the sex industry may not have other income sources, and yet are ineligible for government support. Also, those who have worked for different legal employers during the last 12 months may also not qualify for support as they are deemed to have not worked for the same organisation within a year. We need to ensure that decriminalisation provides sex workers with greater entitlements and securities and in the process ensure it protects their dignity and their human rights.

Benefits of decriminalisation

- Achieve a reduction in stigma associated with sex work affecting individual freedom and long-term plans and goals and impacting the health and wellbeing of sex workers. Support sex workers’ right of self-

determination to freely determine their political status and freely pursue their economic, social and cultural development, and their rights to security of person, housing and health.¹⁶

- Increase safety for sex workers as a result of having legitimate, and therefore safer and more secure, working environments.¹⁷
- Enable crimes committed against sex workers, including acts of violence to be reported more freely by removing the barrier of workers needing to disclose their potentially illegal work. Relationship with police will improve as police are no longer the regulators of the industry.
- Provide a harm reduction approach by improving the safety of the environment in which sex work occurs and supporting the choices of sex workers to either remain in or leave the industry.¹⁸
- Empower sex workers to speak more openly about issues they face as well as providing them better access to and support from police and other positive outcomes related to free agency.¹⁹ This will provide a benefit to their overall well-being.
- Support individual peer advocacy in the sex work industry by enabling peer-led initiatives which empower and include the experiences of sex workers.²⁰
- Allow the belief that sex work attracts criminal activity to be challenged. Research demonstrates that residents' perceptions of brothels in their area are neutral.²¹
- Enable workers to choose to disclose their work to other agencies including medical, drug and alcohol, mental health, housing and financial institutions without fear of incrimination thereby improving access to vital services and facilities, as well as providing greater access to other specialist services. This will positively impact their health and well-being.
- Provide greater safety to those who participate in street sex work, by enabling a greater focus on safety and amenity rather than enforcement.
- Benefit the broader community through increased incidence of sex workers reporting violent offenders and by reducing stigma for clients.
- Provide greater freedom to access protections under laws governing OH&S, public health and crime.

The future – post decriminalisation

The RhED program envisages that demand for the program will escalate significantly as a result of decriminalisation. RhED does not envisage that the size of the sex industry will increase, however under a decriminalised model, RhED will have greater access to work environments that are currently criminalised under the legislation such as massage parlours. In addition to this, RhED anticipates an escalation of queries from the community about the legislative changes, their legal rights, business registration and taxation implications and how any legislation change may impact additionally on their working environment and the personal implications for them in relation to these changes.

Any estimation in relation to the size of the Victorian unregulated industry is difficult to make. According to sources such as Sex Work Law Reform Victoria however, there are approximately 1200 independent sex workers currently registered in Victoria. Under a decriminalised model, there is an estimation of another 4000-5000 independent workers who are not registered whose work would no longer be criminalised under a decriminalised model.²²

In addition to this, there is an estimation of 500 currently illegal brothels in Victoria as reported by agencies such as Project Respect and Victoria Police Sex Industry Coordination Unit.²³

Under a decriminalised model, these workers would be more likely to access services including RhED as there is often a perception that RhED, as a health service is linked with authority services. This is particularly

magnified in migrant communities where language barriers and cultural factors require significant resourcing to address appropriately to ensure equitable service delivery and cultural sensitivity.

From a public health perspective, RhED would like to see all information including health, workplace rights, taxation law etc. being available to all sex workers irrespective of their work environment. Decriminalisation will allow the program to be able to seek these opportunities to reach these target groups who have previously not received this information assertively as a result of their work being criminalised. However, given the anticipated significant increase in the communities RhED will have access to, RhED is not currently equipped within the existing funding remit to effectively resource these communities into the future.

RhED also anticipates higher engagement from communities who have not accessed the RhED program historically as a result of their work being criminalised, or who may be more isolated as a result of being geographically located in rural or regional areas of Victoria that are not currently effectively assertively resourced by the program. A significant percentage of these workers are anticipated to be from migrant backgrounds. In short, the need for RhEd's services will multiply several times over. In order to carry out this work successfully, in addition to increasing our social media and digital reach amongst communities, RhED requires significant additional resources in the health education, health promotion and community development space to effectively address the diversity of the sex industry across all parts of Victoria.

** Denotes that names have been changed to protect the identity and privacy of those mentioned in the case studies.*

- ¹ The Lancet: [An action agenda for HIV and sex workers, by C Beyrer, A Crago, L Bekker, J Butler, K Shannon, D Kerrigan et al.](#)
- ² The Star Observer: [Sex offenders targeting sex workers in Victoria no longer able to be given reduced sentences](#)
- ³ Australian Government, Department of Health: [Eighth National HIV Strategy 2018-2022](#)
- ⁴ Sex Work Law Reform Victoria: [Enforcing Street Solicitation Laws](#)
- ⁵ Scarlet Alliance: [Mandatory or compulsory testing of sex workers for HIV and/or sexually transmissible infections in the Australian context](#)
- ⁶ Scarlet Alliance: [Mandatory or compulsory testing of sex workers for HIV and/or sexually transmissible infections in the Australian context](#)
- ⁷ The Lancet: [Global epidemiology of HIV among female sex workers: influence of structural determinants, by K Shannon, SA Strathdee, SM Goldenberg, p Duff, P Mwangi , M Rusakova , et al](#)
- ⁸ Public Health Association of New Zealand: Policy on Decriminalisation of Prostitution
- ⁹ CASA: [‘Stealthling’ is it sexual assault?](#)
- ¹⁰ Sex Work Law Reform Victoria: [Enforcing Street Solicitation Laws](#)
- ¹¹ Open Democracy: [Decriminalising sex work in New Zealand: Its history and impact](#)
- ¹² The University of NSW: [The Sex Industry in NSW: A report into the NSW Ministry of Health](#)
- ¹³ The Guardian: [Drive-thru brothels: why cities are building ‘sexual infrastructure’](#)
- ¹⁴ Scarlet Alliance: [Principles for Model Sex Work Legislation](#) – referencing the Report from the Asia Pacific Regional Consultation, UNAIDS and UNFPA (the United Nations Population Fund) Building Partnerships on HIV and Sex Work: Report and Recommendations from the first Asia and the Pacific Regional Consultation on HIV and Sex Work 2011
- ¹⁵ John Iliffe: [A History of the African AIDs epidemic](#)
- ¹⁶ Amnesty International: [Policy on State Obligations to respect, protect and fulfil the human rights of sex workers](#)
- ¹⁷ University of Otago: [The Impact of the Prostitution Reform Act on the health and safety practices of sex workers, by G. Abel, L Fitzgerald, C. Brunton](#)
- ¹⁸ Scarlet Alliance: [A Guide to Best Practice - Occupational Health and Safety in the Australian Sex Industry, compiled by D Edler](#)
- ¹⁹ The New Zealand Sex Workers’ Collective: [The New Zealand Model](#)
- ²⁰ The New Zealand Sex Workers’ Collective: [The New Zealand Model](#)
- ²¹ The University of Technology Sydney Law Research Series: [News Zealand Geographer - Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use, by J Prior and P Crofts](#)
- ²² Sex Work Law Reform Victoria: [Private Sex Workers](#)
- ²³ SBS Thai: [‘The majority of illegal brothels are massage shops’ say police](#) and Sex Work Law Reform Victoria: [Why is the number of legal brothels decreasing?](#)