



Vixen Collective (Victoria's peer only sex worker organisation)

Phone - 0414 275 959

Postal Address - Melbourne Flinders Lane

PO Box 525

Flinders Lane, VIC 8009

Email - vixencollectivemelbourne@gmail.com

Web - vixencollective.blogspot.com.au

Victorian Law Reform Commission

Email: law.reform@lawreform.vic.gov.au

GPO Box 4637

Melbourne Victoria 3001

REF: *The Role of Victims of Crime in the Criminal Trial Process*

1st February 2016

Commissioners,

Vixen Collective is a non-funded organisation run by sex workers volunteering their time and energy in the absence of a funded peer only sex worker organisation in Victoria.

We appreciate this opportunity to contribute to The Role of Victims of Crime in the Criminal Trial Process and attach our submission accordingly, and also the consideration we have received in being able to make a late submission to the process.

We look forward to engaging throughout this process and encourage you to contact us if you require any further detail or if you wish to discuss any part of this submission.

Sincerely,

Jane Green

On behalf of Vixen Collective

Vixen Submission

Vixen Collective - Victoria's peer only sex worker organisation.....3

Vixen Collective Objectives.....5

Sex Workers and Access to Justice in Victoria.....7

 The Licensing System 7

 Barriers to Police and Reporting Crime..... 9

 Stigma and Discrimination Against Sex Workers in Australia 10

What should be the role of victims of crime in the criminal trial process?.....13

 The role of victims in the decision to prosecute..... 13

 The role of victims in pre-trial proceedings..... 14

 The role of victims in the trial 15

 The role of victims in sentencing 15

 Compensation, restitution and other orders..... 18

 The role of victims in appeal proceedings 18

 Victims’ rights..... 18

 Support for victims..... 19

Vixen Recommendations.....21

Glossary of Terms.....24

Vixen Collective - Victoria's peer only sex worker organisation

Vixen Collective is Victoria's peer only sex worker organisation. Through our objectives and work we promote the cultural, legal, human, occupational and civil rights of all sex workers.

Victoria has a proud history of sex worker rights. With the advent of HIV in the 1980s, Australia led the world by deploying a community based response - money was given to key communities (sex workers, gay men, injecting drug users, etc) to form their own organisations to contribute to the fight against the virus. Melbourne was the first place in the world to commit funding to a sex worker organisation - the Prostitutes Collective of Victoria (PCV). The PCV were pioneers in sex worker organising. However, in 2001 the PCV was taken over by a community health service and it ceased being an organisation of sex workers.

It was in this environment of Victoria lacking a sex worker run organisation, that Vixen Collective was formed in 2005. Vixen Collective was started by a group of Victorian sex workers and launched at the 2005 Scarlet Alliance (Australian Sex Workers Association) national forum. Later gaining membership of Scarlet Alliance in 2007, Vixen Collective has continued to engage in sex worker rights organising, building participation by local sex workers, as well as developing links to state and national sex worker organisations.

Vixen Collective continues to work fiercely on sex worker rights in Victoria, through:

- a) being a proud peer only (sex worker only) organisation
- b) encouraging local sex worker participation
- c) consultation with Victorian sex workers on key community issues
- d) peer education and peer support to local sex worker community
- e) education initiatives with broader non sex worker community
- f) advocacy and lobbying to government
- g) working to break down stigma and promote positive media on sex work
- h) work with other community organisations eg. VAC, ISCHS
- i) HIV advisory work (as a key population)

- j) work with the Victorian Police
- k) public education eg. Festival of Sex Work

This submission has been produced by Vixen Collective, through ongoing consultation with Victorian sex workers.

Vixen Collective remains an unfunded organisation and is run solely through the volunteer energy of Victorian sex workers.



Vixen Collective Objectives

- I. Vixen promotes the cultural, legal, human, occupational and civil rights of all sex workers.
- II. Vixen believes that sex workers have the right to work under legislation that promotes our rights and occupational health and safety. Vixen seeks to challenge any legislation, implementation thereof or its enforcement, where it infringes on the rights and/or occupational health and safety of sex workers.
- III. Vixen seeks to engage with current government, regulators, officials, policy makers and those who implement government policy to lobby for the rights and safety of sex workers, without accepting the status quo if it does not support sex workers' rights or safety, specifically challenging those that infringe on the rights of sex workers.
- IV. Vixen affirms that the model of sex work regulation it supports is the *full decriminalisation of sex work* and that we will not accept other discriminatory models or legislation that infringe on the rights of sex workers.
- V. As sex workers we should be able to work how, when and where we choose - including (but not limited to) street based sex work, brothel based sex work, private sex work, escort sex work and opportunistic sex work.
- VI. Vixen recognises and values our members' diversity, we are committed to promoting the wellbeing and rights of sex workers from diverse backgrounds.
- VII. Vixen works to create and facilitate means by which current and former sex workers' voices are heard, both within and outside sex worker community, and specifically to government.
- VIII. Vixen works to combat stigma and whorephobia via a range of mechanisms:
 - a. Vixen provides training and presentations on sex work to community groups, educational institutions, sex work forums and government bodies.
 - b. Public events, to demystify sex work and allow the public to gain understanding for our work.

- c. Producing positive media on sex work and addressing negative media when necessary.
- IX. Vixen plays a role, as a key population, in informing Australia's response to HIV.
- X. Vixen seeks to empower Victorian sex workers through the provision of community and peer support.
- XI. Vixen disseminates information on sex work to sex workers through the Vixen Website, Vixen Facebook, Vixen Twitter, as well as regular meetings and consultations.
- XII. Vixen connects with other sex worker organisations nationally and internationally.



Sex Workers and Access to Justice in Victoria

The Licensing System

In Victoria, the current regulatory system for sex work is licensing. This is administered by the state government, through Consumer Affairs Victoria (CAV), and with the registration/licensing of sex workers, managers and sex industry businesses by the Business Licensing Authority (BLA).

" CAV regulates the sex work industry, providing all administrative support for BLA decision-making, as well as undertaking compliance monitoring and enforcement of parts of the Act; educational activities and stakeholder engagement; and policy and legislation work.

Victorian legislation and regulations that play a major role in governing the sex work industry include:

- *Sex Work Act 1994: regulates and controls sex work in Victoria*
- *Sex Work Regulations 2006: provides for the safety of sex workers, clients and the general community*
- *Sex Work (Fees) Regulations 2004: prescribes fees to be paid under the Act*
- *Public Health and Wellbeing Act 2008: promotes and protects public health and wellbeing in Victoria.*"¹

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

Licensing as a regulatory model creates a burden for the state in terms of both administration and cost, whilst failing to achieve substantial levels of compliance. This has been borne out by the experience of licensing models implemented in Australia, both in Victoria and in Queensland², where regulatory regimes have proven to be ineffective in terms of compliance³ and cost recovery:

¹ Sex Work (Fees) Regulations - Regulatory Impact Statement, Consumer Affairs Victoria, April 2014, pg.3.

² [Regulatory Impact Statement for SL 2007 No. 192](#), Queensland Government, 2007, pg 11-12.

³ "There are 97 licensed brothels (physical buildings) in Victoria, however there is no reliable number regarding the scale of illegal brothels. Estimates range from 7 (according to regulatory and enforcement officers) to 40 (according to sex workers themselves) while estimates of the number of people that engage in illegal private work ranges from 100 to 450. Industry participants have estimated that the number of illegal brothels operating far exceeds this estimate with ratios closer to 10 illegal brothels for every legal business." Sex Work (Fees) Regulations 2014, Consumer Affairs Victoria, April 2014, page 4.

*" Presently, the costs of effective administration of the Act greatly exceed the revenue. Based on recent discussions with the BLA and CAV, 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.**"⁴ - emphasis added*

In a decriminalised system of regulation, such as in New South Wales, costs to the state are greatly reduced as there is no extensive bureaucratic framework to administrate, but rather sex work is regulated as any other work. Local councils have the ability to use planning powers to regulate sex industry businesses in their area, sex industry businesses are required to comply with council planning policies and make development applications for permission to operate.

Continuing to regulate sex work in Victoria under a licensing system, perpetuates stigma and discrimination against sex workers by failing to recognise sex work as work. Instead sex work and specifically sex workers are treated as separate and distinct from other workers - requiring monitoring and registration by government, regulation of our workplaces by police, and regulation of our bodies through mandatory STI/HIV testing.

Most importantly – and as this submission will outline - licensing as a regulatory system places significant barriers on sex workers' ability to access police and justice.

It is partly because of these barriers to police and justice (as well as numerous other reasons) that decriminalisation of sex work is recognised as the worlds' best practice model for sex industry regulation. This is recognised by the United Nations⁵, the World Health Organisation⁶, Amnesty International⁷, Australia's HIV Strategy⁸, multiple medical studies⁹, and sex workers' representative

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

⁵ The United Nations Population Fund, United Nations Development Fund and UNAIDS support the decriminalisation of sex work and note that legal empowerment of sex worker communities underpins effective HIV Responses.

⁶⁶ "Countries should work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.", [Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations](#), World Health Organisation, July 2014, pg.91.

⁷ [Global movement votes to adopt policy to protect human rights of sex workers](#), Amnesty International, 11 August 2015

⁸ Australian Government Department of Health and Ageing, Sixth National HIV Strategy 2010-2013, Commonwealth of Australia, Canberra, 2010 at 6.4.

⁹ For example: C Harcourt, J O'Connor, S Egger, C Fairly, H Wand, M Chen, L Marshall, J Kaldor, B Donovan, 'The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers', Australian and New Zealand Journal of Public Health, 2010, 34:5 pg 482.

organisations¹⁰. ***It is critical that the removal of the licensing system and the full decriminalisation of sex work in Victoria be the foundation of any process to improve the rights of sex workers as victims of crime.***

Barriers to Police and Reporting Crime

Under licensing systems, access to police for sex workers is significantly reduced due to the oppositional roles sex workers and police are placed in¹¹. This is particularly acute for sex workers who work outside the licensing system, or whose work may remain criminalised (for example street based sex workers in Victoria).¹²

This affects sex workers' ability to access justice, with consequential flow on effects on individual sex workers and sex worker community safety.

- Where sex work remains criminalised in Victoria (specifically, street based sex work) there are higher barriers to workers approaching police for assistance due to fears caused by:
 - a) prior negative interactions with police
 - b) outstanding fines and/or warrants

¹⁰ Vixen Collective Media Release, Tuesday 15th September 2015, "*We recognise full decriminalisation of sex work is the only acceptable model of regulation for sex workers' human rights, labour rights, health and safety.*", Signed by: Vixen Collective (Victoria's peer only sex worker organisation), Scarlet Alliance (Australian Sex Workers Association), Sex Workers Outreach Project NSW (SWOP-NSW), Sex Workers Outreach Project Northern Territory (SWOP-NT), People for Sex Worker Rights WA (PSR-WA), Resourcing health & Education Victoria (RhED), Nothing About Us Without Us (NAUWU), Debby Doesn't Do It For Free (Sex Worker Arts & Performance Collective), Touching Base Inc, Fiona Patten – MLC for Northern Metropolitan (Victoria Parliament), Victorian AIDS Council, Living Positive Victoria, Harm Reduction Victoria, Burnet Institute, Australian Research Centre in Sex Health and Society (ARCSHS), Australian Federation of AIDS Organisations (AFAO).

¹¹ "The nature of sex workers' contact and interaction with police determines whether they feel confident making complaint to police regarding crimes of violence. Better relationships with the police were apparent...where the police had no role in regulating the sex industry.", Scarlet Alliance and the Australian Federation of AIDS Organisations, [Unjust and Counter Productive: The Failure of Governments to Protect Sex Workers From Discrimination](#) Sydney, 1999, pg 14.

¹² Although Victorian police have stated that it is "unlikely" that a sex worker would be charged for a breach of the licensing system when reporting a crime of violence or rape - this remains a significant disincentive for sex workers as it is discretionary (often up to the individual officer) as to whether or not to place charges. Refer - ['St Kilda sex worker calls out on Red Umbrella Day for more effort to find Tracey Connelly's killer'](#), Bayside Leader, December 18th 2013

- c) the possibility of being charged for sex work that is still criminalised when reporting a crime¹³
- Sex workers who are non-compliant with the licensing system are often less likely to report crimes against them, because the penalties within the licensing system cause them to have significant concerns around:
 - a) detection by police
 - b) the possibility of being charged for sex work that is outside the licensing system when reporting a crime
- The relationship between police and sex worker community, although improved from the time of full criminalisation of sex work, continues to be informed by this history and to improve requires:
 - a) the full decriminalisation of sex work in Victoria
 - b) the training of Victoria Police (with both incoming recruits and existing members) by peer sex worker organisations
 - c) ongoing communication, consultation and liaison with sex worker community

Stigma and Discrimination Against Sex Workers in Australia

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

- Registration of sex workers via the licensing system in Victoria
- Medical records where sex worker status is recorded due to mandatory STI/HIV testing
- Convictions retained prior to the licensing system, through current street based sex work or due to sex work outside the licensing system
- Interactions with outreach or support services where sex worker status is recorded
- Through 'outing', being exposed as a sex worker either inadvertently or maliciously

¹³ Ibid

Being identified as a sex worker has consequences, in terms of the stigma and discrimination that individual sex workers and sex worker community faces, including but not limited to:

- The 'Leaking' and misuse of personal information on sex workers can lead to stalking, blackmail & extortion
- Sex workers experience increased stigma and discrimination in media
- There are less opportunities for sex workers to utilise remedies to address discrimination
- Being a sex worker may affect the outcome of child custody cases
- There is discrimination in education against sex workers (including the exclusion of sex workers from University Courses on 'morals clauses')
- Sex worker status may affect access to housing and accommodation
- Sex worker status affects employment disputes & future employment opportunities
- Being out or being 'outed' as a sex worker leads to discrimination regarding health insurance
- Sex workers are discriminated against regarding goods and services (including banking and online commerce)
- Sex workers are discriminated against regularly in medical settings (for example refusal and/or exclusion from treatment 'on conscience')
- Sex workers have been discriminated against in membership of trade unions
- Sex workers experience the implication of 'criminality' that is implied by registration under licensing regimes
- Sex workers have less ability to access police/justice under criminalised and licensing systems
- There is reduced access to health/outreach services for sex workers under criminalisation/licensing systems for regulating sex work

- Police attitudes to sex workers, including corruption and harassment from criminalisation, and entrenched stigma/discrimination from prior criminalisation - affect sex workers' ability to access police and their treatment when sex workers do
- Sex workers experience stigma and discrimination through 'outing', being exposed as a sex worker, this can impact on workers but also on families, partner/s and friends
- It can affect school age and/or older children if a parent or carer is who is a sex worker is 'outed'
- Sex workers may experience interpersonal and/or interfamilial violence when 'outed'
- Sex workers are subject to stalking and harassment from anti sex work groups and their members, including outing to family and in social media
- Sex workers have been barred entry to clubs or hotels
- Lastly, sex workers are often not considered stakeholders in discussions on their own lives, their representative organisations not consulted by government on sex work policy and law

It is critical when considering sex workers as victims of crime, that the following is considered:

- ***impact of that person being identified as a sex worker***
- making the trial process accessible, rather than viewing any barriers to participation as the problem (or more specifically treating barriers to participation as the victims' problem)
- what any decision means in terms of maintaining barriers against sex workers accessing justice

What should be the role of victims of crime in the criminal trial process?

The role of victims in the decision to prosecute

It has been indicated by sex workers that cases of physical and sexual assault against sex workers are sometimes not proceeded with by prosecutors¹⁴, due to a perception that it is more difficult to gain a conviction against someone who assaults a sex worker.

Given the significant access barriers present for sex workers we strongly agree there should be:

- Stronger obligations on prosecutors to consult with victims
- Consequences for prosecutors for a failure to consult with victims

However, as the issues for our community are so significant and the barriers so high, we would also suggest that there is a need for more involvement and cooperation to address these issues at an organizational level.

This should take the form of greater consultation between DPP, Victoria Police, Victim Support Services and sex workers representative peer organisations.

We would also agree there should be processes for Judges to follow to ensure victims are consulted.

It would be paramount that throughout this process the following is maintained, in order to lower barriers to justice and to better enable sex workers to participate in the criminal trial process:

- Sex workers should always have access to name suppression
- Sex workers should not be subject to stigma or discrimination, in the course of any part of the criminal trial process
- Sex worker status is not part of a victims' sexual history, it is part of a victims' ***work history***

¹⁴ Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

- The victims' sex worker status should never be relevant to decisions to prosecute or be considered as relevant to the 'character' of witnesses
- The victims' sex worker status should never be considered relevant to the sentencing of an offender/s

The role of victims in pre-trial proceedings

We object to the access or use of medical or counselling records in sexual offense cases, specifically in regard to sex workers'. Due to the current level of stigma and discrimination against sex workers and sex worker community this represents both a barrier, and an additional trauma to victims.

As already stated sex worker status is not part of a victims 'sexual history', it is part of a victims' **work history** and should not be able to be raised in this manner.

The publication of identifying information for sex workers, as outlined in 'Stigma and Discrimination Against Sex Workers in Australia', can cause literal harm – it is essential that sex workers have recourse to name suppression and the ability to prevent publication of identifying information.

It is our opinion that should they wish to do so victims should always be allowed to appear in court and make submissions, when pre-trial applications affect their interests, without requiring permission from the judge.

It would be our opinion that the state should provide free legal representation to victims of crime. But also that there be a requirement that such representation be required to meet with relevant state peer-based agencies so as to meet the requirements of the community it serves – most specifically the most marginalised within community.

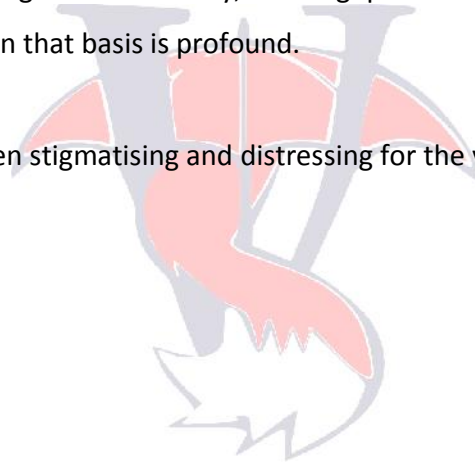
The role of victims in the trial

When testifying as a victim of crime, sex workers generally face one of the following two issues when in court:

- the crime against them occurred while they were engaging in sex work, therefore their work will likely be discussed in court
- the crime against them has nothing to do with their work, but there is the possibility their sex work history/status will be disclosed in court

Testifying when one is known to be a sex worker adds an additional burden for sex workers pursuing justice. The expectation of being treated unfairly, of being questioned on sexual history, on work history, and on being judged on that basis is profound.

Media coverage of trials is often stigmatising and distressing for the victim and sex worker community.



The role of victims in sentencing

There has been a history of reduced justice received for sex workers who are victims of crime in Victoria, with lower sentences for crimes against sex workers¹⁵

Most recently the Adrian Bailey case highlighted the distinct difference between sentencing for other victims for crime as opposed to those that offend against sex workers:

¹⁵ "Bailey was first jailed in 1991 for sexual assault and served just 22 months of a five-year sentence. In September 2000 he was jailed for a minimum of eight years for the rape of five prostitutes over a six-month period..", ['Jill Meagher's husband Tom Meagher says justice system failed her and Adrian Bailey's sentence is a disgrace'](#), ABC News, 20th June 2013.

"Mr Meagher says he is concerned the justice system treated the attacks on the sex workers differently than the attack on his wife.

"I'm aware his previous victims in previous cases before Jill were sex workers, and I'll never be convinced that doesn't have something to do with the lenience of his sentence," he said.

"Put it like this: if he'd raped five people like Jill that many times in that brutal a fashion, I don't think he would have served eight years in prison."

He says that "sends a disturbing message".

"What it says to women is if we don't like what you do, you won't get justice," he said.

"And what it says to people like Bayley is not 'don't rape', but 'be careful who you rape'."¹⁶

In Victoria there is existing case law providing for reduced sentences for cases involving sex workers as victims:

"..the Harris and Hakopian cases reinforced what is known as the "whore stigma", where female sexuality is divided into a good girl/bad girl binary. "Good girls" are worthy of the protection of the law; bad girls are not.

Immediately following the Hakopian controversy, Victoria's then-attorney-general Andrew McCutcheon made a verbal reference to the state's Law Reform Commission to inquire into issues arising out of the case, to be rolled into an existing inquiry by the commission into rape law. In 1992, the commission recommended that the principle underlying Hakopian be overturned. It argued that:

If sentences are to be differentiated on the basis of the psychological effect of the crime on the victim, these assessments must be based on information about the actual impact of the offence on that particular victim, not simply on the fact that the victim comes from a particular social or occupational group.

This recommendation was never acted upon.

¹⁶ 'Jill Meagher's husband Tom Meagher says justice system failed her and Adrian Bayley's sentence is a disgrace', ABC News, 20th June 2013, <http://www.abc.net.au/news/2013-06-19/tom-meagher-says-justice-system-failed-his-wife/4766620>

The current sentencing guidelines for Victorian judges note that the guidance offered by Hakopian and Harris is “non-binding” as it was of a factual nature, that it is contentious, and that the ubiquity of victim impact statements in modern times is likely to render these cases irrelevant. However, the principles of Harris and Hakopian remain available to judges.

This sentencing advice is troubling on three fronts. First, it allows judges to interpret that sex workers experience trauma and victimisation differently to “chaste” women, and reinforces the whore stigma. Second, it can be interpreted as placing an onus on sex worker victims to prove their trauma. Third, it shifts focus away from the offender and their actions and towards the victim..”¹⁷

It is our strong recommendation that the principle underlying Harris and Harkopian be overturned.

We also recommend:

- that victims be allowed to make submissions at sentencing hearings
- that victims be represented by a lawyer during sentencing hearings
- that community impact statements be introduced in Victoria and specifically that for marginalised communities such as sex worker community, representative peer based organisations be able to make community impact statements

¹⁷ ['Victorian rape law needs reform to protect sex workers'](#), The Conversation, 30th March 2015.

Compensation, restitution and other orders

We make the recommendation that the state rather than victims be responsible for enforcing victims compensation and restitution orders against offenders, as at present an undue burden is placed on victims, which prolongs their trauma and disadvantages marginalised communities.

The role of victims in appeal proceedings

We would recommend that the DPP be required to consult with victims about appeals and that victims be given standing to participate in appeals.

We would also recommend that victims be allowed to provide an updated victim impact statement in circumstances where the Court of Appeal decides to resentence an offender.

Victims' rights

The failure to consult sex workers when applying laws and policy to our lives and workplaces is enduringly problematic and the consequences far reaching. What may make sense or have negligible effects when applied to other sections of the community can create issues when applied to a marginalised community without consultation.

We would recommend that there be a process for investigating and resolving complaints made by victims, we would not be opposed to the Victorian Victims of Crime Commissioner playing a role in this process. But would recommended that sex workers' peer representative organisations and the peer representative organisation of other marginalised communities and other relevant bodies be involved in the development of this process.

Support for victims

The barriers that exist for sex workers engaging with and/or benefiting from support services in Victoria include:

- Workers operating outside the licensing system (the system for regulating sex work in Victoria) or those subject to remaining criminalisation (for example street based sex workers) may have reluctance to access services due to fear of repercussions relating to their sex worker status/legal status being recorded.
- Fear of stigma and discrimination when accessing services, when/if sex worker status is revealed
- Concern that accessing services may have a negative impact on child custody if sex worker status is revealed
- Concern that sex worker status may affect access to housing, including safe housing and other government services
- Fear of outing of sex workers' status (to family, friends, community, etc), including deliberate outing/threatened outing by offenders

While we would be in favour of a victims' advocate service we would, once again, reiterate the need for the service to work with sex workers' representative peer organisations.

The full decriminalisation of sex work would remove systemic barriers to sex workers accessing support services, as sex workers would have reduced fears of consequences flowing from sex worker status/legal status being recorded.

Under decriminalisation sex workers are better able to access assistance when in need because of improved relations with police¹⁸.

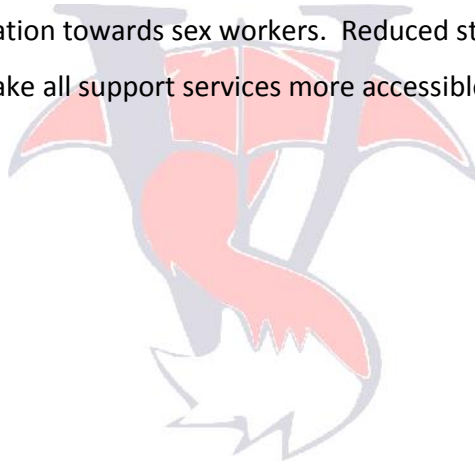
¹⁸ "The nature of sex workers' contact and interaction with police determines whether they feel confident making complaint to police regarding crimes of violence", Scarlet Alliance and the Australian Federation of AIDS Organisations, [Unjust and Counter Productive: The Failure of Governments to Protect Sex Workers From Discrimination](#) Sydney, 1999, pg 14.

Access to justice is improved for sex workers under decriminalisation, including an improved ability to pursue criminal cases against those who perpetrate violent or sexual offences against sex workers, but also civil protections (such as restraining orders).

As there is no Federal and limited State protection from discrimination on the basis of occupation (on the basis of “lawful sexual activity”¹⁹), it is necessary that anti-discrimination protections on the basis of occupation be put in place to prevent legal discrimination against sex workers.

Anti-discrimination protections on the basis of occupation would ease fears of discrimination when accessing support services.

Although fears surrounding being outed as a sex worker cannot be removed wholly through legislative change, removing discriminatory laws such as licensing in Victoria are a first step in reducing stigma and discrimination towards sex workers. Reduced stigma and discrimination towards sex workers would make all support services more accessible to sex workers.



¹⁹ Section 6 Attributes, "(g) lawful sexual activity...", Victoria Equal Opportunity Act 2010, pg. 18.

Vixen Recommendations

Vixen Collective recommends that the Victorian Law Reform Commission - in consultation with sex workers and their representative peer sex worker organisations:

- 1) *Recognise that licensing as a regulatory system places significant barriers on sex workers' ability to access police and justice, and that removing the licensing system in Victoria is a necessary step in lowering these barriers*

We ask that the Victorian Law Reform Commission join Vixen Collective in asking the Victorian Government to remove the licensing system and pursue the full decriminalisation of sex work in Victoria

- 2) *Recognise that prosecutors have an obligation to consult with victims of crime throughout the criminal trial process – on decisions to prosecute, during committal, pre-trial proceedings, trial, sentencing, appeal and on any other relevant decision making processes – and must make victims of crime aware of their rights to participate throughout the process*

We ask the Victorian Law Reform Commission to recognise the rights of victims of crime in the criminal trial process, to set in place a system to ensure prosecutors meet these obligations, and a complaints process by which victims of crime may seek redress if the system fails them

- 3) *Due to the systemic barriers sex workers and sex worker community face in accessing justice it is important to address systemic solutions, the focus must be on making the trial process accessible rather than prosecutors viewing barriers to progressing individual cases for sex workers as the problem*

We ask that the Victorian Law Reform Commission recommend greater consultation between DPP, Victoria Police, Victim Support Services and the representative peer organisations for marginalised communities – including sex workers representative peer organisations

4) *Lack of access to name suppression can lead to: stigma and discrimination, vilification in the media, harm to community, and presents in itself a significant barrier for victims of crime in proceeding with trial*

We recommend that the Victorian Law Reform Commission recognise that victims of crime who are sex workers should always have access to name suppression in court²⁰

5) *With regards to sexual offenses and whether the defense can use evidence about a victims' or witnesses' sexual history – this should never be acceptable – we argue in the case of sex workers that one's status as a sex worker is not part of sexual history but part of work history and therefore even less relevant*

We ask the Victorian Law Reform Commission to recognise that sex work is work, therefore sex work is not part of a victims' or witnesses' sexual history, but forms part of their work history

6) *We object to the access or use of medical or counselling records in sexual offense cases, as this represents both an additional barrier to justice and is a further trauma to victims of crime*

We ask the Victorian Law Reform Commission recommend that access is not permitted to the medical and/or counselling records of victims in sexual offense cases

7) *The state should provide free legal representation and a victims' advocate service to victims of crime, in order that this representation best serve the needs of the most marginalised in community meetings should be required between those who provide this representation and relevant state peer-based agencies for marginalised communities, including representative peer sex worker organisations*

²⁰ NOTE: Name suppression should apply to all testimony and documentation and should not expire. It should apply within court, including testimony, with sex workers' (whether direct victims' of crime or witnesses) being referred to by pseudonyms if requested.

We ask the Victorian Law Reform Commission to make a recommendation that in consultation with community, including sex worker community, free legal aid and a victims' advocate service be provided to victims of crime by the Victorian Government

- 8) *Rape sentencing guidelines - it is extremely disappointing that Harris and Harkopian remains part of the current sentencing guidelines for Victorian judges – especially given the prior recommendation of the Victorian Law Reform Commission to overturn this in 1992*

We ask the Victorian Law Reform Commission to follow through on its own prior decision from 1992 and overturn the principle underlying Harris and Harkopian – removing a part of the current sentencing guidelines that serves no purpose except to divide rape victims' into "good" and "bad" victims²¹

- 9) *The state rather than victims must be responsible for enforcing victims' compensation and restitution orders against offenders as this otherwise places an undue burden on victims, prolongs their trauma and disadvantages marginalised communities*

We ask the Victorian Law Reform Commission to make a recommendation that the Victorian Government be responsible for enforcing victims' compensation and restitution orders against offenders

- 10) *Community impact statements are specifically relevant to marginalised communities, we would ask that this is recognised and provided for within the criminal trial process/sentencing*

We ask the Victorian Law Reform Commission to make a recommendation that marginalised communities be recognised as stakeholders to community impact statements, including sex worker community

²¹ ['Victorian rape law needs reform to protect sex workers'](#), The Conversation, 30th March 2015.

Glossary of Terms

Non Peer - A non sex worker. When used to describe an organisation this means that although there is the possibility that there may be some sex worker staff it is not a sex worker only organisation.

Peer Only - Sex worker only. When used to describe an organisation this means that everyone involved in the organisation - all staff, management, board members and volunteers - are current or former sex workers.

Private Worker/s - This is the sex worker term for someone who under the licensing law in Victoria is called a small owner-operator sex work service provider, ie an individual sex worker working for themselves rather than in a brothel.

Sex Workers Representative Organisations - In each state and territory of Australia sex workers participate in their representative organisations, for peer support, health promotion and to lobby for law reform. These are peer only organisations.

Whorephobia - The act of holding and/or disseminating stigmatising attitudes towards an individual sex worker or sex worker community.

