



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

Mail: GPO Box 4637, Melbourne Vic 3001

Fax: (03) 8608 7888

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To whom it may concern,

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 Victorian Law Reform Commission - Regulatory Regimes Consultation and attach our submission accordingly.

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

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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/AIDS advisory work (as a key population)
- j) work with the Victorian Police
- k) public education eg. Festival of Sex Work

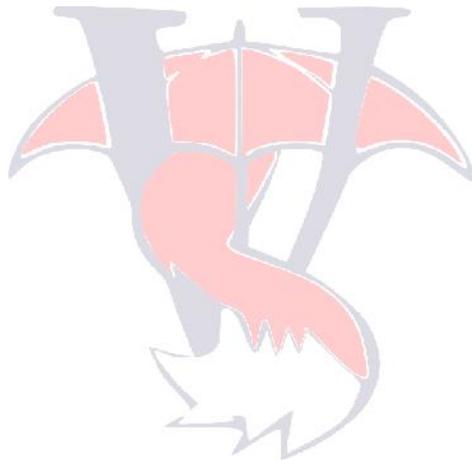
This submission has been produced by Vixen Collective, through ongoing consultation with Victorian sex workers.

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/AIDS.
- 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.



The Victorian Experience

The licensing model itself as well as its implementation and enforcement, both cause and contribute to multiple violations of the human rights and labour rights of sex workers, as well as being an ineffective and costly system of regulation.

Sex workers are currently discriminated against in a multitude of ways on a daily basis in Victoria, and across Australia:

- Stigma/discrimination re 'outing' (impact on workers/family/friends)
- Can affect school age and/or older children if a parent or carer is 'outed'
- Interpersonal/interfamilial violence when 'outed'
- Outcome of child custody cases
- Access to housing and accommodation
- Employment disputes & future employment opportunities
- Discrimination regarding health insurance
- 'Leaking' and misuse of personal information, which can lead to stalking, blackmail & extortion etc...
- Less opportunity for sex workers to utilise remedies to address discrimination
- Goods and services (including banking and online commerce)
- Entry to clubs or hotels
- Education (including exclusion from courses on 'morals clauses')
- Medical treatment (refusal and/or exclusion 'on conscience')
- Membership of trade unions
- Stalking and harassment from anti sex work groups and their members, including outing to family and in social media
- Implication of 'criminality' implied by licensing/registration
- Less ability to access police/justice
- Reduced access to health/outreach services
- Increased stigma and discrimination in media¹

¹ <http://www.abc.net.au/news/2009-06-02/sex-workers-dont-need-to-be-rescued/1701130>, "The offensiveness of the ad comes from the stereotypes and stigma it perpetuates. The ad speaks about a male sex worker who is 'saved' by the Salvation

- Potential for police corruption and harassment

Licensing encourages non-compliance because many components of the licensing system identify sex workers in government records, to regulators and to third parties.

It is on the basis of being identified, of being known as a sex worker, that discrimination functions most effectively against us.

For example, in Victoria:

1) Private sex workers (Small Owner Operator Exempt Sex Work Service Providers) must register with the Business Licensing Authority (BLA), this registration includes information such as:

"..for each person working as a sex work service provider in the business all names by which the sex work service provider has been and is known, his or her date of birth and residential address.."².

Requiring a residential address, when a sex worker may live with parties that are unaware of their sex worker status and where it may place them at risk should such parties become aware is unacceptable. There have been instances reported to Vixen Collective where the CAV/BLA have sent correspondence to residential addresses and flat-mates and/or family have opened mail on behalf of a worker and they have been 'outed'³.

2) All sex workers working in Victoria are required to undergo mandatory three monthly health exams in order to work.⁴

Yet mandatory testing is unnecessary with regard to STI and HIV rates within sex worker community, as medical research consistently reports rates for sex workers that are as low or lower than that of the general community⁵ regardless of the regulatory regime in place.

Over testing of sex workers is a waste of tax payers money and uses health resources that could be better devoted to high risk groups, or to free up overcrowding in anonymous services.

Having to attend a GP or medical centre, to obtain a medical certificate, 'outs' workers to doctors which is stigmatising and can lead to intrusive and/or inappropriate comments and questions.

Army. The stereotype is simple. Sex workers are victims of an immoral world, the Salvation Army are our liberators. Readers' first thoughts are "Yes a sex worker is saved by a religious charity, all is right in the world". It is always more plausible to understand sex workers as victims than it is to understand us as intelligent, articulate and community-minded. The proof that stigma and discrimination is so rife is that people will believe and accept an unusually dramatic story over and above the banal day-to-day reality of paying your rent or mortgage through sex work.", 'Sex workers don't need to be rescued', ABC - The Drum, 3rd June 2009.

² Sex Work Regulations 2006, Victorian Government, 25th June 2012, Part 4, Regulation 10 (1A), pg. 10.

³ Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

⁴ Sex Work Act 1994, Victorian Government, 13th August 2013, Part 2, Regulation 19 & 20, pg. 32-35.

⁵ *"Among the 140 LASH participants in Sydney who were tested for four common STIs – chlamydia, gonorrhoea, trichomoniasis, and Mycoplasma genitalium infection – the prevalence of these conditions was at least as low as would be found in women in the general population"*, The Sex Industry in NSW: A Report to the NSW Ministry of Health, 2012, pg.23.

The requirement for provision of medical certificates leads to unnecessary compiling of data on sex workers both by medical staff and at sex industry businesses.

There is only one confidential service in Victoria that sex workers can attend, Melbourne Sexual Health (MSH), located in central Melbourne. This is not accessible to many sex workers, especially rural sex workers, and it is a drop-in clinic (appointments cannot be made) meaning waiting times are lengthy - often between three to five hours.⁶

Licensing as a regulatory model creates a burden for the state in terms of 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 Queensland⁷, where the regulatory regimes have proven to be ineffective in terms of compliance⁸ and cost recovery:

*" 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.**"⁹ - emphasis added*

The regulation of 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 testing.

⁶ Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

⁷ [Regulatory Impact Statement for SL 2007 No. 192](#), Queensland Government, 2007, pg 11-12.

⁸ *"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.

⁹ Sex Work (Fees) Regulations 2014, Consumer Affairs Victoria, April 2014, page 5.

Specific Responses to Questions in the Consultation Paper

Question 1. What changes or additions would you make to the information presented in Table 1 (pages 23-26) and Table 2 (pages 31-32) regarding the purposes of infiltration? .."

It is represented in the part of the table '***Infiltration related to trafficking/servitude offending***' that lawful sex work provides:

- *"Distribution of illicit goods and services/Access to the established business infrastructure and client bases of licensed brothels for the supply of trafficked women/victims of servitude."*
- *"Obfuscation of criminal conduct/Intermingling of voluntary sex workers with trafficked women/victims of servitude. Use of a licensed brothel under the pretense of providing lawful sex work services."*
- *"Exploitation of competitive advantage/For licensed brothel owners: minimisation of labour costs. High-volume servicing of clients by exploitation of trafficked women/victims of servitude."*
- *"Concealment or laundering of the proceeds of crime/Intermingling of lawful and unlawful revenue (that is, revenue earned from legitimate sex work services and revenue earned from unlawful activity)."*¹⁰

However, trafficking has been shown not to be a feature of the Australian sex industry, according to Australian government figures:

*"Chris Ellison, then Minister of Justice, said, 'no significant' sex slavery problem existed in Australia.. Between January 2004 and October 2011, the Australian Federal Police Human Trafficking Team undertook over 305 investigations into allegations of trafficking-related offences. These assessments led to 39 matters being referred to the Commonwealth Director of Public Prosecutions for matters related to sexual servitude and other labour exploitation. Of those, 14 have resulted in convictions.."*¹¹

It is also clear that the sex industry is not the only industry in which trafficking occurs, although until recently both government and the media have tended to focus wholly on trafficking, within the sex industry, to the exclusion of all other industries.

¹⁰ 'Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries', Consultation Paper, Victorian Law Reform Commission, June 2015, pg. 24.

¹¹ ['Scarlet Alliance, Australian Sex Workers Association, Recommendations to the UN General Assembly High Level Dialogue on Migration and Development'](#), 15th July 2013, pg.3-4.

"Recently, a shift has been seen in both research and policy towards a greater focus on trafficking for the purpose of exploitation in industries other than the sex industry..

.. although the scale of the problem is yet to be determined, recent AIC research and a small increase in detected labour trafficking cases has confirmed that labour trafficking is an issue across several Australian industries and warrants further attention.."¹² - emphasis added

The idea that trafficking/servitude of persons into the sex industry would represent a "*minimisation of labour costs*"¹³ is untenable when the actual costs of trafficking/servitude are considered. If a person was transported to Australia (costs of flights) then held against their will (cost of food, accommodation, clothing, monitoring 24/7) the costs would be prohibitive. Given the large numbers of willing sex workers available already in Australia who would not incur any of these costs for the business (or place the business at any risk of prosecution), it is not a likely scenario. Sex work is predicated on the idea that the experience is mutually enjoyable - if clients perceive that a worker is not enjoying themselves or comfortable in the situation - then it is likely a booking cannot proceed. This would present a significant barrier to those seeking to place trafficked persons into sex work. It has been the case that clients have discovered and assisted victims of trafficking, this has been recognised by government¹⁴, and both criminalisation and licensing of sex work (specifically for those workers unable to comply with licensing) act as barriers for assistance of this nature.

Positing that the "*Intermingling of voluntary sex workers with trafficked women/victims of servitude*"¹⁵ occurs, ignores the fact that both sex workers themselves and brothels can and have reported concerns they hold about workers to police¹⁶.

The level of focus on trafficking in the sex industry (this focus being almost exclusive, as if trafficking does not occur in other industries when this is not the case¹⁷), the policies this produces and the enforcement of these policies all contribute to:

¹² [People Trafficking in Australia](#), Trends & issues in crime and criminal justice no.441, Australian Institute of Criminology, June 2012.

¹³ 'Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries', Consultation Paper, Victorian Law Reform Commission, June 2015, pg. 24.

¹⁴ "To support the policing and prosecution of people traffickers, there is a genuine need to ensure the capacity for gathering intelligence for the clients of sex workers.. some victims of trafficking are discovered and assisted by their clients..", 'Inquiry Into People Trafficking For Sex Work - Government Response', State Government Victoria, 2011, pg.7.

¹⁵ 'Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries', Consultation Paper, Victorian Law Reform Commission, June 2015, pg. 24.

¹⁶ 'Trafficking of Women for Sexual Purposes', Australian Institute of Criminology, Research and Public Policy Series No. 95, Fiona David, 2008, pg. 24-25.

¹⁷ "...recent research has indicated that labour trafficking exists in a broader context of exploitation of migrant workers, particularly those in low-skilled professions. In 2010, those perceived to be at greatest risk of exploitation were vulnerable migrant workers. These were most commonly encountered on 457 visas relating to semi-skilled occupations, 109 and among migrants working in the agricultural sector or as domestic workers, international students and those working in the maritime/seafaring sector.", 'Organised Crime in Australia 2013', Australian Crime Commission, July 2013, pg.62.

- Stigmatising migrant sex workers as 'trafficked victims'
- Disrupting the lives and work of migrant sex workers through police activity, immigration raids and the activity of 'rescue' groups
- Increase in non compliance with the licensing system due to migrant sex workers engaging in raid avoidance strategies making access by outreach services more difficult
- Distrust in and therefore lessened ability to reach out to police for migrant sex workers when victims of violence or crime

Recommendations re table, pg.24: 'Infiltration related to trafficking/servitude offending'

It is recommended that the first section of the table be amended to read:

- *"Access to the established business infrastructure and client bases of licensed brothels for the supply of trafficked women/victims of servitude is minimal, but would be further reduced, and capacity for reporting any incidences increased, under the full decriminalisation of sex work in Victoria"*

It is recommended that all other sections of the table under the heading 'Infiltration related to trafficking/servitude offending' be removed.

It is represented in the part of the **table 'Infiltration unrelated to trafficking/servitude offending'** that lawful sex work provides:

- *"Access to inputs for the commission of crime/Recruitment of new organised crime group members"*
- *"Concealment or laundering of the proceeds of crime/Intermingling of lawful and unlawful revenue (that is, revenue earned from legitimate sex work services and revenue earned from unlawful activity unrelated to trafficking/servitude offending)"*

Vixen Collective through our work maintain ongoing contact with Victorian sex worker community, including conducting regular consultations on a variety of subjects. It has not been reported either in consultation with sex worker community, or anecdotally that organised crime is either a feature, or even occurring sporadically within the sex industry in Victoria.

It is our belief that the Victorian sex industry is classified in this way due to a number of factors:

- The historical context of criminalisation of the sex industry in Victoria.
- The enduring perception of the sex industry/sex workers as criminals due to this history.
- The entrenched discriminatory attitude of police, a significant number of whom are still in place from this era.

- Stigmatizing media attitudes towards the sex industry/sex workers.
- The activities of anti sex work groups/religious groups that lobby for abolition of sex work.
- Funding for non peer NGO's and service organisations that relate to sex work are often predicated on portraying sex workers as victims and/or in need of exiting a 'dangerous' industry, these policies contribute to the stigmatization of sex work and sex workers.
- Sex workers and sex worker peer organisations are often excluded from policy discussions or not considered to be key stakeholders.

Recommendations re table, pg.24: 'Infiltration unrelated to trafficking/servitude offending'

It is recommended that the first section of the table be amended to read:

- *"Access to inputs for the commission of crime/Recruitment of new organised crime group members is minimal, but would be further reduced, and capacity for reporting any incidences increased, under the full decriminalisation of sex work in Victoria"*

It is recommended that all other sections of the table under the heading 'Infiltration unrelated to trafficking/servitude offending' be removed.

Question 2. Is the draft model for assessing the risk of infiltration (pages 32-37) a helpful way to assess the risk of organised crime group infiltration of lawful occupations and industries?

Both the use of situational crime prevention (SCP) and more traditional methods (relying on law enforcement tools) to assess risk of infiltration, fail to address the need for:

- Input from the key industry stakeholder (sex workers, through sex workers representative organisations/sex workers)
- Empirical evidence regarding infiltration/risk of infiltration

Attempts to assess 'risk of infiltration' by an objective set of criteria, however seemingly rational the criteria, must be deemed a failure when they give results that are contradicted by evidence produced by both the Australian Governments' own studies and those of the key industry stakeholder (sex workers representative organisations/sex workers).

Recommendation re suitability of draft model for assessing the risk of infiltration:

At present the draft model is not suitable (refer Question 2 for recommendation on changes to the draft model).

Question 3. What changes or additions would you make to the draft model for assessing the risk of infiltration (pages 32-37)?

As expressed in Question 2 any proposed model must take account of:

- Input from the key industry stakeholder (sex workers, through sex workers representative organisations/sex workers)
- Empirical evidence regarding infiltration/risk of infiltration

Recommendation re changes/additions to draft model for assessing the risk of infiltration:

Regardless of the model used the primary criteria for assessing risk of infiltration must be:

- a) Input from the key industry stakeholder (sex workers, through sex workers representative organisations/sex workers), and
- b) Empirical evidence regarding infiltration/risk of infiltration.

Question 4. Having regard to the regulatory tools described in Chapter 4, which regulatory tools are, or might be, useful in addressing each of the risks identified in the draft model for assessing the risk of infiltration (pages 32-37)?

The Victorian Police have a role in addressing the risk of infiltration of OCG's across the sex industry in Victoria, only when the following is addressed:

- 1) Victorian Police must be removed as regulators of sex work
- 2) Full decriminalisation of sex work in must be implemented in Victoria
- 3) It is necessary that there be training delivered by peer sex worker organisations to the Victorian Police to reduce existing levels of stigma and discrimination against sex workers and sex worker community (Specifically refer Questions 6, 7, 17)
- 4) Like other significantly marginalised communities (e.g. LGBTIQ¹⁸ community) sex workers should have specifically designated and trained liaison officers to facilitate reporting of crimes against sex workers (whether these crimes occur within the context of sex work or otherwise)

This is necessary so that sex workers in Victoria can freely access and report to the police as other people and workers do when victim of, or witness to crime in Victoria.

Also refer sections: 1, 5, 6, 15, 17.

¹⁸ ['Overview of Gay and Lesbian Liaison Officers'](#), Gay and Lesbian Liaison Officers (GLLOs), Mon 23 December 2013, Victorian Police

Question 5. For the purpose of preventing organised crime group infiltration of lawful occupations and industries, what are the advantages and disadvantages of regulation by:

a) a traditional occupation or industry regulator such as the Business Licensing Authority

For the purposes of preventing organised crime group infiltration the disadvantages of a traditional occupation or industry regulator such as the Business Licensing Authority (BLA) are as follows:

- The BLA is primarily accessible online, which is a barrier to accessibility
- Its documentation is only available in English
- Application procedures are often complex and lengthy
- The regulations governing the sex industry are themselves complex and not contained in one piece of legislation, creating barriers to compliance because of the scope and/or detail of the licensing system
- Application requirements have barriers for sex workers that do not exist for other workers/industries
- Current short annual return periods add to the regulatory burden for sex workers

All of the above issues contribute to lower compliance with the licensing system in Victoria. Lower compliance with the licensing system compounds issues that sex workers working in the non compliant sector may face in terms of difficulties reporting instances of infiltration to authorities (although as referred to in Question 1, page 11 it has not been reported to peer sex worker organisations such as Vixen Collective that:

"... It has not been reported either in consultation with sex worker community, or anecdotally that organised crime is either a feature, or even occurring sporadically within the sex industry in Victoria.."

b) Victoria Police

For the purposes of preventing organised crime group infiltration the disadvantages of the Victorian Police as regulators of sex work are as follows:

Access to police for sex workers is significantly reduced due to the oppositional role sex workers and police are placed in by the licensing system¹⁹. This is particularly acute for sex workers who work outside the licensing system or whose work remains criminalised (street based sex workers).

The ability to access justice, with the consequential flow on effects on sex worker safety, is reduced at three levels for Victorian sex workers:

¹⁹ "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.

- i. Reduced access to police (oppositional role of police, as mentioned above)
- ii. Reduced ability to access justice through the courts
 - Cases not taken up due to a perception that it is more difficult to gain a conviction against someone that assaults a sex worker
 - Name suppression is often denied to sex workers who are victims of crime, including crimes of violence and rape
 - Fear of 'outing' discourages sex workers from pursuing charges through the courts
 - The stigma of testifying as a sex worker adds an additional burden for sex workers pursuing justice
 - Media coverage of trials is often stigmatising and distressing for the both sex workers who are victims of crime and sex worker community
- iii. Reduced justice received
 - There is a history of low sentences for crimes against sex workers²⁰
 - Victorian case law exists on reduced sentencing for cases involving rape of sex workers (Harris/Harkonen)²¹

Sex workers working in the non compliant sector of the sex industry are less likely/able to report any instances of infiltration to authorities.

It is often the case that even workers in the compliant part of the sex industry will avoid contact with police, due to bad experiences, often involving stigma and discrimination (not necessarily due to personal experience, but because of knowledge of the experiences of workmates/others in sex worker community).

c) both a traditional regulator and Victoria Police

Combining a traditional regulator and Victoria Police, which is the system now in place for the sex industry in Victoria, compounds issues of barriers to compliance (as outlined in 'a') with barriers to reporting (as outlined in 'b').

It is the recommendation of Vixen Collective that the implementation the regulatory model of full decriminalisation of sex work would alleviate both of these issues by reducing compliance barriers

²⁰ "Bayley 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 Bayley's sentence is a disgrace'](#), ABC News, 20th June 2013.

²¹ "Two controversial cases provide a non-binding precedent that allow judges to consider the victim's sexual experience when passing sentence on an offender – but only in circumstances when the "victim is a prostitute"... 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...", ['Victorian rape law needs reform to protect sex workers'](#), The Conversation, 30th March 2015.

and (by placing sex workers in a non oppositional role with Victoria Police) begin to remove barriers to reporting.

Question 6. If a regulator is required to prevent the infiltration of organised crime groups into an occupation or industry, how does this affect, or how might this affect, the pursuit of its other regulatory purposes and objects (whether positively or negatively)?

If a regulator is tasked with this purpose, it is often pre-supposed that such a issue/risk (the infiltration of organised crime groups) exists. Funding for the regulator can become tied to the purpose of 'prevention of infiltration of organised crime', regardless of evidence, and it would be against the regulator's own interests (ie - arguing against its continued funding) for the regulator to highlight this.

At present, Victoria Police, list as their mission:

"At Victoria Police, our mission is to ensure a safe, secure and orderly society by serving the community and the law.

Through the combined efforts of our workforce, we give effect to our mission to ensure a safe, secure and orderly society through:

- Preserving the peace
- Protecting life and property
- Preventing offences
- Detecting and apprehending offenders
- Helping those in need of assistance.."²²

At present this mission is unable to be served with regard to sex workers and the sex industry in Victoria, due to the position Victoria Police hold as regulators of the sex industry.

It is the recommendation of Vixen Collective that implementation of the regulatory model of full decriminalisation of sex work would, by removing Victoria Police from the role of regulator, alleviate many of the current barriers to fulfilling the function of this mission.

Question 7. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate entry into an occupation or industry (for example, by requiring would-be entrants to obtain a licence)?

²² http://www.police.vic.gov.au/content.asp?Document_ID=3, About Victoria Police - Our Mission, Victoria Police Website, 9 April 2015.

With regard to sex work, regulating entry would simply present another barrier to compliance. For example, licence requirements often hold specific challenges for sex workers who are an already marginalised and stigmatised population. Such challenges compound issues of non-compliance with the licensing system for sex workers, when there are already no incentives to comply (no specific benefits accrue to sex workers from complying with the licensing system). As already expressed in points 1-6 regulation of sex work through full decriminalisation would address these issues, lowering barriers to compliance and making reporting of the infiltration of organised crime groups (OCG's) to police more likely if such infiltration were to occur.

Proof of Identity:

As indicated in the section of this document entitled 'The Victorian Experience' compliance with the licensing system (much of which requires proof of identity) carries inherent and serious risks for sex workers, including but not limited to discrimination, stigma, 'outing', interpersonal/interfamilial violence, outcome of child custody cases, access to housing/accommodation, current and future employment opportunities, access to health insurance, misuse of personal information, inability to utilise remedies to address discrimination, access to goods and services (including banking and online commerce), entry to clubs or hotels, discrimination in education, discrimination in medical treatment, membership of trade unions, stalking and harassment, portrayal in media, police corruption & harassment, access to justice (through criminal and civil courts).

License Pre-conditions:

Subjective Pre-conditions -

License pre-conditions that are subjective and at the discretion of the regulator are by their nature likely to be open to operating on the stigma and prejudice that is prevalent in general society towards sex workers.

Objective Pre-conditions -

Objective pre-conditions such as disqualifying offenses do not take account of the historical context of the sex industry - that in every state and territory in Australia at some point in time the sex industry has been criminalised (and in some states/territories parts/all of the sex industry remain so). To exclude people from participating in sex work or other facets of the industry based on prior convictions often means excluding people for acts that may have in the past resulted in conviction/s, but that are explicitly legal now (or legal in the current jurisdiction, i.e. Victoria).

As an example - sex work is still criminalised in South Australia, sex workers who have received convictions retain these on their records permanently:

*"..women charged with loitering when they were waiting for a bus or walking home, leaving them with a criminal record, simply because they were known to police. For many lobbyists, the scrubbing of sex workers' past convictions is a crucial part of law reform.
Many older sex workers, particularly those who worked in the '90s when police raids on brothels*

were common, now have rap sheets of 70 plus charges .. making it virtually impossible to move into any other form of work where a police check might be necessary.²³

Workers travelling from interstate (such as South Australia), or from within Victoria that either:

- Have prior convictions, including Victorian sex workers with convictions from prior to the commencement of the Victorian licensing system, or
- Have convictions or a history of interaction with Victorian police due to the continuing criminalisation of street sex work in Victoria,

face significant barriers in applying for licenses as service providers and brothel managers - specifically in relation to "character, honesty and integrity" - which specifies "keeping criminals out of the industry"²⁴.

As pointed out above this is penalizing people for convictions retained from either:

- a) States/territories outside of Victoria that still fully/partly criminalise sex work
- b) Historical convictions in the Victorian sex industry dating from prior to the change to a licensing system²⁵
- c) Current convictions/contact with Victoria police due to continuing criminalisation of street sex work, which provides significant barriers to movement to both the compliant sector of the sex industry and/or other employment

Scrutiny of Associates:

The use of scrutiny of associates suffers from many of the same issues as objective pre-conditions, in failing to take account of the historical context of the sex industry.

Sex workers maintain close knit community ties with other sex workers. We build structures of support, peer education, advocacy and community organising.

²³ <http://www.adelaidenow.com.au/lifestyle/sa-lifestyle/sa-sex-workers-call-for-new-laws-to-make-it-clear-theyre-not-criminals/story-fnizi7vf-1226920276847>, 'SA sex workers call for new laws to make it clear they're not criminals', Adelaide Advertiser, Petra Starke, 16 May 2014.

²⁴ <http://www.consumer.vic.gov.au/businesses/licensed-businesses/sex-work-service-providers/brothel-managers>, 'Brothel Managers - Eligibility', Consumer Affairs Victoria.

²⁵ "Spent Convictions Schemes" apply to convictions or findings of guilt for offences under Commonwealth laws, and the laws of some States and Territories. Generally, a "spent conviction" under these schemes is a conviction or finding of guilt for a Commonwealth, Territory, State or foreign offence where it is 10 years or more since the date of that conviction or finding of guilt (or five years for juvenile offenders) and the offender was not sentenced to imprisonment for more than 30 months (or six months in some States) and has not re-offended during that period.

Under these schemes a person with a "spent conviction" is not required to disclose that conviction or finding of guilt to any authority within the jurisdiction to which the scheme applies, and those authorities are prohibited from disclosing information about a "spent conviction" without the consent of the person concerned.

You should note that there is no "spent conviction" legislation in force in the State of Victoria. Accordingly "spent conviction" information may be disclosed in relation to a conviction for an offence under Victorian law.." (emphasis added), Consumer Affairs Victoria, 'Apply for a Sex Work Service Providers License - Spent Conviction Schemes', <http://www.consumer.vic.gov.au/businesses/licensed-businesses/sex-work-service-providers/licensing/apply-for-a-licence>, as of 5th August 2015.

Issues such as the retention of convictions from the period when the Victorian sex industry was criminalised, the continuing criminalisation of street based sex work in Victoria, and/or friendships with interstate workers who may retain convictions under current fully/partially criminalised environments, count against sex workers if 'scrutiny of associates' measures are utilized by regulators.

Group-based License Exclusions:

Not applicable

Investigation of License Applications:

Investigation of license applications where "*..the information to be provided to Victoria Police is determined by the regulator or Victoria Police..*"²⁶ provides for a situation where investigations may be affected by entrenched discriminatory attitudes within the police force towards sex workers.

Historically all sex work in Victoria has been criminalised, with street based sex work remaining so. There are many officers still on the force from the period of full criminalisation, often now in senior roles. Police culture still prevalently views sex workers as criminals, as a population in need of control, and often responds poorly to sex workers in need of assistance.

To suggest, as it does in section 4.60, that "*..any recommendations of Victoria Police will be binding on the regulator..*"²⁷ is to remove any recourse to natural justice from sex workers, in an environment in which they are already significantly disadvantaged.

Informing the Public

Requirements for applicants to inform the public by placing notices in newspapers and the like would place sex workers at risk because of the enduring stigma attached to sex work.

As outlined in the section of this document titled 'The Victorian Experience' sex workers are at risk through outing, which can impact:

- Sex workers themselves
- Sex worker's family and friends
- Can affect sex worker's school age and/or older children if a parent or carer is 'outed'

Outing can lead to interpersonal/interfamilial violence, but also to stalking, blackmail, extortion, and targeting by anti sex work groups.

License Conditions

²⁶ 'Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries - Consultation Paper', Victorian Law Reform Commission, June 2015, section 4.60, page.48.

²⁷ 'Use of Regulatory Regimes in Preventing the Infiltration of Organised Crime into Lawful Occupations and Industries - Consultation Paper', Victorian Law Reform Commission, June 2015, section 4.60, page.48.

License conditions and the regulator's discretion to attach and vary conditions and revoke licenses would add to:

- Government intrusion into sex workers lives
- An added burden of complying with regulatory conditions for sex workers
- Additional cost of license application/renewal for sex workers (costs both monetary and time)
- Stress re potential for regulator to change conditions/revoke licenses

Question 8. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of any of the following:

(a) positive licensing regimes

Many of the listed key components of licensing schemes²⁸ when in operation raise barriers due to the stigma and discrimination faced by sex workers, or operate on the basis of this stigma.

For example:

Proof of Identity: requirements for sex workers to produce proof of identity are a significant disincentive to participation in licensing due to the implications being identified as a sex worker can have.

Being identified as a sex worker can have implications²⁹ not limited to impacting:

- Interpersonal and interfamilial violence when 'outed'
- Can affect school age and/or older children if a parent or carer is 'outed'
- Outcome of child custody cases
- Other future employment
- Access to housing and accommodation
- Goods and services (including banking, insurance and online commerce)
- Entry to clubs or hotels
- Education (including exclusion from courses on 'morals clauses')
- Medical treatment
- Membership of trade unions

²⁸ VLRC Regulatory Regimes Consultation Paper 4.27 "Some of the key components of a licensing regime relate to: proof of identity, licence preconditions, scrutiny of associates, group-based licence exclusions, the investigation of licence applications, requirements to inform the public, and licence conditions", page 43.

²⁹ Refer 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.

- Stalking and harassment from anti sex work groups and their members, including outing to family and in social media

(b) negative licensing regimes

Negative licensing systems, where classes of people may be excluded from an occupation or industry unless they obtain the permission of the regulator³⁰, can potentially raise barriers based on stigma for sex workers.

It has been proposed in draft legislation previously in Australia (South Australia, Western Australia) to exclude those who have previous convictions for working in the sex industry from gaining license to work in the sex industry. This ignores the fact that in environments where the industry has criminalised in the past, then moved from criminalisation to a licensing system - many sex workers may retain convictions from their time in the sex industry under criminalisation. To attempt to exclude these workers is highly discriminatory and ignores the historical context of the industry.

(c) registration schemes

A key component of the licensing system in Victoria is registration, which applies to individual sex workers working as private escorts (Exempt Sex Work Service Providers) or who seek to work from their own individual premises (Small Owner Operator - Exempt Brothel).

Registration violates the human and civil rights of sex workers, creating a permanent record of sex worker status that can affect all of the areas outlined in the previous section as well as restriction of movement and identification of travel documents³¹.

Registration creates a database of sex workers for government, as if we are in need of monitoring and control - treating sex workers as criminals - simply because we are sex workers.

There is no benefit that accrues from registration for a sex worker - it does not make us safer nor assist us in any way in our work - yet the disincentives are profound.

Registration creates an administrative burden for sex workers; in knowing the details of the licensing requirements, filing their information and keeping their records up to date.

Issues of data security, data retention and use of and access to sex workers information remain key concerns where data on sex workers is held by government. There have been both breaches of data security of sex worker registries in Australia (for example, filming of the contents of the ACT register by a television crew) and inappropriate usage of sex worker information from sex worker

³⁰ VLRC Regulatory Regimes Consultation Paper 4.66, page 49.

³¹ Christine Harcourt, Sandra Egger and Basil Donovan, 'Sex Work and the Law', *Sexual Health*, 2, 2005, pg.124.

registers (for example, 'outing' of sex workers from the register held under the containment policy in Western Australia), indicating that where this information is collected it creates greater risk for the safety of sex workers and increases opportunities for discrimination against us.

There is often no clear or convincing answer as to whether information can be removed or expunged from a sex worker registry in Australia.

(d) rules relating to the effective control of a business

No comment.

(e) rules relating to who may be employed in a business

Restrictions around scrutinizing "the people the applicant is proposing to employ in the relevant business" are intrusive with regard to sex workers privacy. Given the high levels of stigma and discrimination against sex workers, to require employee restrictions, that involve determining whether prospective employees are "fit and proper" would be highly discriminatory (refer point 7).

(f) rules relating to re-entry of an occupation or industry

The specification that if a person has had a licence cancelled or a previous application refused they may not be able to re-apply for a minimum period and this may be "*reasonable to reduce the regulator's workload*" is an impediment to one's ability to engage in their occupation in compliance with the law.

(g) other regulatory tools that you would like to comment on

No comment.

Question 9. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, what are the costs and benefits of group based licence exclusions?

No comment.

Question 10. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to monitor an occupation or industry?

Monitoring, as with the regulation of entry into the sex industry, creates disincentives to compliance due to the implications that being identified as a sex worker can have (refer 'Question 8 (a) positive licensing regimes').

Monitoring can also create specific issues for sex workers that face intersecting marginalisation, for example migrant sex workers. It has been noted that due to the frequency of police and immigration raids, migrant sex workers may engage in raid avoidance strategies, making access by outreach services more difficult.

Monitoring also leads to the compiling of records on sex workers in an environment in which our lives and work is already heavily stigmatised, and the costs of being identified as a sex worker are high.

Question 11. When monitoring an occupation or industry in order to prevent or detect the infiltration of organised crime groups, what are the costs and benefits of any of the following:

a) short licence periods/regular licence renewals

Short licence periods and regular licence renewals place additional compliance burden and cost on sex workers. Sex workers can easily become non-compliant inadvertently, potentially leading to penalties. This would also raise issues with increased and ongoing compliance costs.

b) a complaints-based model versus an inspection based model

A complaints based model can produce issues with vexatious complaints and also those based on whorephobia/stigma.

There have been reported incidences of religious and "rescue" groups in Victoria using the threat of complaint (eg. immigration raids) to extort access to sex industry premises³².

Inspection based model are:

³² Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

- Invasive to sex workers privacy and human rights
- Burdensome to the state and costly to operate
- Historically have been prone to corruption in the past in Victoria³³

c) investigative powers (or particular investigative powers)

Additional powers (for example "enter and search premises and seize items") over and above the powers of the Victorian Police create the following issues:

- Greater barriers between sex workers and government agencies are raised
- This can further marginalise sex worker community
- Stigma and discrimination against sex workers can increase
- Sex workers are less likely to access police and outreach services

d) prohibited practices

No comment.

e) record-keeping obligations

Record keeping requirements in regard to sex workers in Victoria both contribute to discrimination and facilitate that discrimination.

This is specifically in relation to:

- Registration of sex workers under licencing
- Continued criminalisation of street based sex work in Victoria
- Retained convictions for sex workers convicted of offenses under criminalisation (prior to the commencement of the licencing regime in Victoria)
- Sex workers who come into contact with police in their role as regulators (whose details are often recorded by police regardless of no offense being committed or charge being made)

f) continuous disclosure obligations

These requirements place an unnecessary burden on sex workers (refer 'a) short licence periods/regular licence renewals' in this section).

³³ ['Council Officer 'sold soul' to protect brothels'](#), The Age, September 6 2012.

g) other monitoring tools that you would like to comment on?

No comment.

Question 12. What are the most useful ways of detecting people (particularly organised crime groups) who are operating in a lawful occupation or industry without the required authorisation (such as a licence)?

The primary issues for sex workers who cannot comply with the licensing system and remain in the non complaint section of the industry are:

- Lack of access to health and outreach services
- Greater difficulty in accessing police when victims of crime
- Less ability to access justice, either through criminal or civil court
- Risk of extortion over non compliance

Question 13. Which enforcement measures are useful, or might be useful, in preventing organised crime group infiltration of lawful occupations and industries?

The most useful response in preventing organised crime group infiltration of lawful occupations and industries, *specifically in regard to the sex industry in Victoria*, would be the full decriminalisation of sex work in Victoria.

Full decriminalisation of sex work in Victoria would aid in preventing OCG infiltration as under the full decriminalisation of sex work:

- Industry transparency & access is increased
- Aids anti-trafficking efforts by increasing sex industry transparency
- Begins to remove barriers for sex workers in seeking police assistance when victims of crime
- Removing police as regulators removes the oppositional role between police and sex workers
- Removal of the oppositional role between sex workers and police, means sex workers are much more likely to report crimes to police, both crimes against sex workers and OCG infiltration if it occurs (although as previously indicated it has not been reported either in consultation with sex

worker community, or anecdotally that organised crime is either a feature, or even occurring sporadically within the sex industry in Victoria).

- Improved access for outreach and health services, including sex workers representative organisations

Question 14. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries, is it useful to regulate the exit of people from an occupation or industry? Which tools are, or might be, useful for this purpose?

No, this is not relevant to the sex industry or sex workers and should not be applied.

Question 15. Are there any problems with current information-sharing arrangements? If so, how might these problems be overcome? Information-sharing arrangements can refer to information sharing between regulators and Victoria Police, between different Victorian regulators, between Victorian and interstate regulators, and between any other agencies that hold relevant information.

Information sharing between government agencies presents significant issues for sex workers because of the high levels of stigma and discrimination already outlined throughout this submission (in particular refer to 'The Victorian Experience').

It is often the case that information collected on sex workers, for example:

- Registration of private workers (Small Owner-Operator Exempt Sex Work Service Providers) with the BLA
- Medical records identifying sex workers due to mandatory STI testing
- Interactions with police at sex industry premises
- Reporting crimes of violence against where sex workers supply personal details to police

Can lead to workers being treated as de facto criminals due to their status as a sex worker.

Without the full decriminalisation of sex work and the application of anti discrimination protections on the basis of occupation for sex workers in Victoria, information sharing between government agencies would simply become a tool for compounding and proliferating stigma and discrimination against sex workers in Victoria.

Question 16. Please comment on the extent to which regulatory tools that may be used to prevent the infiltration of organised crime groups into lawful occupations and industries may:

- a) insufficiently protect the rights of people affected by decisions of the regulator**
- b) insufficiently protect the rights of any other stakeholder**
- c) impose additional burdens on regulators, courts and/or tribunals in relation to the provision of reasons for decisions and opportunities for review**

(a) insufficiently protect the rights of people affected by decisions of the regulator

The tools outlined throughout the consultation paper pre-suppose that sex workers have parity with other people/workers in other industries that may be affected by decisions of regulators with regard to infiltration of OCG's.

This is not the case. Sex workers are a marginalised population and our rights are already significantly compromised by the regulatory environment (licensing) that sex workers work under in Victoria.

(b) insufficiently protect the rights of any other stakeholder

Often other stakeholders voices are prioritised over those of sex workers. It must be recognised that in policy on sex workers lives and work - **the key stakeholders are always sex workers.**

(c) impose additional burdens on regulators, courts and/or tribunals in relation to the provision of reasons for decisions and opportunities for review

The licensing system in Victoria already imposes a significant burden on the state, both in terms of cost (which is not recoverable from fees), additional unnecessary bureaucracy and loss of productive police time. Any amendments to the system to extend the licensing system in relation to OCG's would only add to this already onerous burden.

Question 17. In seeking to prevent the infiltration of organised crime groups into lawful occupations and industries:

- a) What issues are, or might be, better dealt with through legal responses other than occupational/industry-based regulatory regimes (including but not limited to the 'other legal responses' described at pages 66-68)**
- b) What issues are, or might be, better dealt with through occupational/industry-based regulatory regimes rather than other legal responses?**

(a) What issues are, or might be, better dealt with through legal responses other than occupational/industry-based regulatory regimes (including but not limited to the 'other legal responses' described at pages 66-68)

The repeal of all criminal laws relating to street based sex work in Victoria would remove significant barriers for street based sex workers reporting crimes to police, including if occurring, OCG infiltration.

The repeal of Victorian case law that gives reduced sentencing to those that are convicted of the crime of rape against a sex worker in Victoria (Harris/Harkonen)³⁴ would remove a significant barrier for sex workers reporting crime to police, including if occurring, OCG infiltration.

As previously indicated in this submission it has not been reported either in consultation with sex worker community, or anecdotally that organised crime is either a feature, or even occurring sporadically within the sex industry in Victoria.

(b) What issues are, or might be, better dealt with through occupational/industry-based regulatory regimes rather than other legal responses?

The repeal of all criminal laws relating to sex work in conjunction with the full decriminalisation of sex work in Victoria would begin the process of eliminating barriers to sex workers reporting crime to police. Once the sex industry is regulated as other industries and sex workers have the labour rights of other workers in Australia, then a process of breaking down stigma and discrimination can begin.

³⁴ "Two controversial cases provide a non-binding precedent that allow judges to consider the victim's sexual experience when passing sentence on an offender – but only in circumstances when the "victim is a prostitute"... 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...", ['Victorian rape law needs reform to protect sex workers'](#), The Conversation, 30th March 2015.

Are Regulatory Regimes Effective in Prevention of Organised Crime

"whether, to what extent and in what circumstances regulatory regimes may be effective in helping to prevent organised crime infiltration of lawful occupations or industries"

Regulatory regimes may be effective in helping the prevention of organised crime infiltration of lawful occupations or industries, however it is important to note:

- As has been mentioned in this submission it has not been reported either in consultation with sex worker community, or anecdotally that organised crime is either a feature, or even occurring sporadically within the sex industry in Victoria
- The only regulatory regime which provides an outcome that would be effective in preventing the infiltration of organised crime is the full decriminalisation of sex work.

Sex worker organisations worldwide call for the full decriminalisation of sex work as does Vixen Collective here in Victoria.

- Decriminalisation is the removal of all criminal laws relating to the sex industry, allowing sex work to be regulated like any other business - this does not mean no regulation, but that the sex industry should be regulated like other businesses.
- Decriminalisation is recognised as the worlds' best practice model for sex industry regulation - by the United Nations³⁵, the World Health Organisation³⁶, Australia's HIV Strategy³⁷, multiple medical studies³⁸, and sex workers representative organisations.
- Decriminalisation recognises sex work as work, helping to break down stigma against sex workers and reduce discrimination.
- It has been shown that STI rates and safe sex outcomes are maximised under decriminalisation³⁹.
- Under decriminalisation there is less waste of police resources on enforcement and sex workers are better able to access assistance when in need because of improved relations with police⁴⁰.

³⁵ 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.

³⁶ ³⁶ "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.

³⁷ Australian Government Department of Health and Ageing, Sixth National HIV Strategy 2010-2013, Commonwealth of Australia, Canberra, 2010 at 6.4.

³⁸ 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.

³⁹ National Centre in HIV Epidemiology and Clinical Research, *HIV/AIDS, Viral Hepatitis and Sexually Transmissible Infections in Australia Annual Surveillance Report 2010*, National Centre in HIV Epidemiology and Clinical Research, The University of New South Wales, Sydney, NSW; Australian Institute of Health and Welfare, Canberra, ACT. 2007.

⁴⁰ "The nature of sex workers' contact and interaction with police determines whether they

- It has been shown that sex work as regulated under decriminalisation has little to no amenity impacts.⁴¹
- 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).
- Decriminalisation would give sex workers better access to workplace safety, including state apparatus such as WorkSafe Victoria and the Fair Work Ombudsman.
- Decriminalisation would give sex workers greater ease to access health services, without the requirement to 'out' themselves - as is required due to mandatory testing under current licensing regulations - which has been shown to lead to discriminatory treatment and exclusion from medical services⁴².
- Decriminalisation would remove the impediment to testing and treatment that licensing, remaining criminalisation of street based sex work, and HIV criminalisation present for sex workers⁴³.
- ***There is no evidence of organised crime within the sex industry under decriminalisation.***⁴⁴
- ***Greater industry transparency under decriminalisation aids anti-trafficking efforts***⁴⁵.
- Decriminalisation has been shown not to result in an increase in the numbers of workers participating in the sex industry⁴⁶.

Decriminalisation is a first step to recognising sex worker rights - many more issues remain to be addressed beyond how the sex industry is regulated - including; anti discrimination protection, recognition of sex workers as key stakeholders and experts in our own lives and work, funding for peer sex work organisations.

Although Victoria is one of the states in Australia that offers some protection against discrimination for sex workers⁴⁷, because this protection is based on "lawful sexual activity" rather than on the

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.

⁴¹ Prior and Crofts, 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use', *New Zealand Geographer*, v68, 2012, pg.130.

⁴² The Sex Industry in NSW: A Report to the NSW Ministry of Health, 2012, pg.23.

⁴³ The [UNAIDS Guidance Note on HIV and Sex Work 2012](#) recognises that criminalisation poses substantial obstacles in accessing HIV prevention, treatment and support.

⁴⁴ As recognised by the Land and Environment Court in *Martyn v Hornsby Council*, cited in Nothing About Us Without Us, 'North Sydney Council Prohibits Home Occupation (Sex Services) in All Zones under the New Draft LEP', accessed at <http://nothing-about-us-without-us.com/tag/urban-realists/> on 30 October 2014.

⁴⁵ It has been shown that decriminalising sex work does not cause an increase in trafficking, New Zealand decriminalised sex work in 2003 and continues to be ranked in Tier 1 by the United States State Department Trafficking in Persons Report. United States Department of State. [Trafficking in Persons Report, \(2010\)](#).

⁴⁶ "...the number of sex workers in New Zealand has not increased as a result of the passage of the PRA..." [Report of the PLRC on the Operation of the PLA 2003](#), page.29.

⁴⁷ The other states being the Australian Capital Territory and Tasmania.

basis of occupation⁴⁸ the protection is incomplete and excludes those workers outside the licensing system or subject to criminalisation (street based sex workers). In an environment of prevailing stigma and discrimination this lack of protection for sex workers under the law, combined with the inability of sex workers to access justice generally (either criminal or civil, as discussed later in this submission) contributes to disempowerment for sex workers and compounds discrimination.

Sex workers are the experts in our own lives and work, yet sex worker's representative organisations are routinely excluded from discussions about law, policy and enforcement by government, regulators and officials. It must be recognised that sex workers have information that is critical to these discussions, because we are the experts on sex work. It must be recognised that sex workers are the key stakeholders in these discussions because the law and policies that are produced affect our lives and work profoundly.

Much of the funding for sex worker's representative organisations originally coincided with the peak of HIV funding⁴⁹, in the current environment sex workers representative organisations must remain focused on maintaining health and outreach targets while facing new challenges (emerging technologies that impact on our work, responding to whorephobia within the modern media news cycle etc) with ever dwindling funding streams. At the same time there is competition for funding from non-peer (non sex worker) agencies who gain funding and then form policies that affect our communities without any consultation with sex workers or our representative organisations.

It is essential that government take that first step - the full decriminalisation of sex work - in recognising sex work as work, in recognising sex workers rights and in focusing on the health and safety of sex workers as a key component of the laws that affect us.

⁴⁸ The Law Handbook 2015, <http://www.lawhandbook.org.au/handbook/ch17s01s02.php>

⁴⁹ "The partnership approach.. linked to a core funding arrangement between the Federal Government, States and community organisations..", [Successful HIV/AIDS Prevention Strategies In Australia: The Role of Sex Worker Organisations](#), Saunders, P., 1999, pg.1.

Vixen Recommendations

It is critical that the voices of sex workers be heard, in order that the rights of sex workers be recognised and the safety of sex workers given protection by law.

It is imperative that sex workers be recognised as the key stakeholders regarding our own lives and work, that government consult with our representative organisations, peer sex worker organisations accordingly.

Vixen Collective recommends that in order to prevent the infiltration of organised crime groups into lawful occupations and industries, specifically sex work in Victoria:

- 1) *It must first be acknowledged that **organised crime has not been identified, either in formal consultation with sex worker community, or anecdotally reported, as either a feature, or even as occurring sporadically, within the sex industry in Victoria.***
- 2) *In seeking to prevent the infiltration of organised crime into sex work in Victoria **key goals must be - improved relations between sex workers and police, industry transparency and access by peer outreach services.***
- 3) *In meeting the goals outlined in point 2 **it is essential that there be full decriminalisation of sex work in Victoria, as this will:***
 - a) *remove barriers between sex workers and police*
 - b) *increase industry transparency*
 - c) *improve access by peer outreach services*
- 4) *In further meeting the goals of point 2 **it is necessary for government to work with sex worker organisations to:***
 - a) *introduce anti discrimination protections for sex workers*
 - b) *further reduce barriers to accessing police assistance through peer led anti discrimination training initiatives with police*
 - c) *train police liaison officers so that they are available to facilitate sex workers reporting of crimes (whether crimes occur in relation to our work or otherwise)*
 - d) *make necessary changes to rape sentencing laws in Victoria where victims of crime are sex workers*

- 5) *It must be recognised by government that sex workers are the key stakeholders in our lives. **Sex workers, specifically through our representative peer only sex worker organisations, must be consulted on all matters relating to our lives and work** - by government, regulators, officials, policy makers on any legislation, its implementation and its enforcement.*



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 exempt sex work service provider, ie an individual sex worker working for themselves rather than in a brothel. This is someone that does outcalls - that sees a client at the clients home or a hotel. If the worker has obtained a permit to do incalls (for the client to visit them) the name of this permit is small owner-operator exempt brothel permit.

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.