



**IMPROVING THE RESPONSE OF THE JUSTICE SYSTEM TO
SEXUAL OFFENCES**

Issue Papers A-H

Project Respect Submission

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Contact: Rachel Reilly

Executive Director



Acknowledgments

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About Project Respect

Project Respect is an intersectional feminist organisation, which provides support for women in the sex industry and women who have experienced trafficking. We outreach to licensed brothels across the Greater Melbourne Region to provide women with information about their rights and where they can access support.

Our vision is a world where women are free from trafficking, sexual exploitation, violence, and harm. Our primary mission is to support women in the sex industry and women trafficked and advocate for the structural change needed to end all forms of sexual exploitation. We provide a platform to elevate and amplify the voices of women with lived experience.

Executive Summary

Project Respect welcomes this opportunity to provide feedback to the Victorian Law reform Commissions inquiry into Improving the Response of the Justice System to Sexual Offences and congratulates the government for its ongoing effort to address violence against women in Victoria. Project Respect recognises that not all women in the sex industry experience violence, exploitation or harm. However, based on our work with women, and the experiences of women we support, discrimination, violence and exploitation of women in the sex industry is significant, widespread and harmful.

A note on case studies

All names have been changed and identifying details removed.

Summary of Recommendations

Issue Paper A

1. Ensuring women who work in the sex industry are aware of their rights within the industry and understand what constitutes sexual harm.
2. Women with experience of the sex industry are considered a high-risk group to experience sexual offences.
3. Provide the appropriate services to allow women in the sex industry who have been sexually harmed to report and access support.
4. Ensure that support service systems are equipped to assist women from multicultural backgrounds and women who have experienced complex trauma, without stigma and discrimination.
5. Increased oversight of brothel operators and management to make sure they are both aware of what constitutes sexual harm and complying with CAV Standards.
6. Mandated reporting of sexual assault by sex industry business owners and management.
7. Sex industry business owners mandated to induct new workers and undergo their own training to equip them with the skills to better deal with sexual assaults within their workplaces.
8. Increase the inclusion of women in the sex industry in the resources, supporting materials, and risk assessments released under the MARAM framework.
9. Australian National Research Organisation for Women's Safety (ANROWS) investigate what measures, statistics and data about violence against women who are in the sex industry to then be included in the Victorian Family Violence Index.
10. Australian Human Rights Commission conducts data collection from all States and Territories in Australia to determine the prevalence of sexual harassment and assault within the sex industry.
11. Victorian Government adequately funds organisations that are supporting women in the sex industry and survivors of sexual assault.
12. Victorian Government recognise and fund Project Respect as a specialist agency addressing violence against women who are in the sex industry, including family violence, as a part of the Victorian family violence system.

Issue Paper B

13. Improve the attitudes towards women in the sex industry who have been sexually assaulted via greater awareness and visibility of their situation through inclusion within violence against women campaigns.
14. Support programs are visible and accessible to women in the sex industry who have experienced sexual harm.
15. Support programs are culturally diverse and offer translated information.
16. Support programs engage with women in an understanding and non-discriminatory manner.

Issue Paper C

17. Implementing consent forms and hotlines in brothels for women who work in the sex industry to use.
18. Technology facilitated abuse and violence in the commercial sex industry setting needs to be included as an offence in Part 1. Division 1 – Offences Against the Person of the Crimes Act.
19. The availability of training and education regarding technology facilitated abuse for women working in the sex industry to build the knowledge and capacity to keep themselves safe while operating a business online.

20. Ensure women who work in the sex industry are granted street-based protection through legislation.

Crimes Act 1958 (Vic)

21. Develop a clear understanding of how “consent” as defined in the Crimes Act 1958 (Vic) applies to people providing sexual services, and also to women who are substance-use affected in the context of work.
22. Pursuant to Crimes Act 1958 (Vic), develop the understanding of the definition “commercial sexual services” and whether offences relating to “commercial sexual services” include people providing sexual services in a street setting to ensure they are provided protection under those offences.
23. Inclusion of sexual assault colloquially named “stealthing” be included as an offence under Part 1. Division 1 – Offences Against the Person of the Crimes Act 1958.
24. Inclusion of technology facilitated abuse and violence in the commercial sex industry setting needs to be included as an offence in Part 1. Division 1 – Offences Against the Person of the Crimes Act 1958.

Sex Work Act 1994 (Vic)

25. Pursuant to Sex Work Act 1994 (Vic), implement a clear definition of what constitutes “non-consensual” sex work and how this definition is to be operationalised and enforced.

Family Violence Protection Act 2008 (Vic)

26. The Family Violence Protection Act 2008 (Vic) Part 2, Interpretations (s)5 *Meaning of family violence* be amended to include examples of specific forms of family violence that are perpetrated towards women with experience of the sex industry that are also considered offences in the Sex Work Act 1994 (Vic).

Issue Paper D

27. SOCIT and MDC’s undertake specific training to increase their understanding of sexual offences within the context of the sex industry setting.
28. Foster greater collaboration between SOCIT and the Sex Industry Coordination Unit to address sexual harm and violence in the sex industry setting.
29. Ensure policing units are staffed by both male and female officers to ensure women reporting sexual harm have the ability to choose who they feel more willing to speak to about their experiences.
30. Enabling a non-discriminatory and comfortable environment for women who have been sexually harmed to engage in the police investigation process, which could include the option to speak specifically to a female police officer.
31. Ensuring the police investigation process has the services in place to engage with women from multicultural and non-English speaking backgrounds.
32. Implementing a direct phone line that allows women in sex work/sex industry settings to report sexual assault.
33. Ensure that police officers are appropriately trained on how to identify indicators of women involved in the sex industry and women trafficked and how this intersects with sexual violence.

Issue Paper G

34. Support restorative and alternative justice models for women who have experienced sexual assault providing it was undertaken in a supportive manner that acknowledges the complexities of the sexual violence women experience within the sex industry.

Context for this submission

A profile of the sex industry

The sex industry in Australia is regulated at a state and territory level, and there is a patchwork of different regulation across the country from decriminalisation, regulation and full criminalisation. The industry has both formal spaces such as brothels and escorting and informal (illegal) spaces such as street based, massage parlours and provision of sexual services from private spaces such as apartments and motels.

There are currently 89 licensed brothels and more than 600 owner-operated licensed sex industry businesses in Victoria. Further, there is an estimate of 500 massage parlours offering unregistered sexual services, and an unknown quantity of women involved in informal (illegal) spaces such as street based and provision of sexual services from private spaces such as apartments and motels.

Data on people involved in the sex industry is very difficult to obtain, due to the stigma, discrimination and criminality of the industry. Research which is available generally focuses on the licensed/regulated space. However, from the limited data available, and based on data from our 20 year history of outreaching to licensed brothels in Victoria, we observe that the sex industry is mostly comprised of women, with a large migrant workforce population, particularly women on temporary visas.

The intersection of women with experience in the sex industry and sexual offences

Members of the Project Respect Women's Advisory Group ('WAG') report that women who work in the sex industry are more likely to experience higher rates of sexual harm and violence than women who aren't working in the sex industry. The WAG has reported the sex industry to be a microcosm of violence against women. As noted in the 2020 Respect@Work: Sexual Harassment National Enquiry Report, the gendered nature of the sex industry and the nature of the work itself places women at higher risk of experiencing sexual harassment and assault from customers and clients. The core of the business model, that focuses on physical appearance and sexual appeal are likely to drive increased risks of sexual harassment and violence. As a result, women in the sex industry can also be exposed to specific types of sexual harm due to the nature of the industry. Further, "[g]ender inequality creates a sense of entitlement and false expectations where men seemingly believe they have the power to do whatever they like within the booking, as they have paid for it".

Women in the sex industry face additional barriers when reporting crimes to authorities and accessing support services. These barriers often deter women in the sex industry from accessing services and seeking support. Stigma, discrimination and the normalisation of violence make it increasingly difficult for women in the sex industry to report forms of sexual violence.

Source of material

This submission draws on information from several sources: from academic and other literature, from the experience of Project Respect staff, from Project Respect data and research, and, importantly, from the expert views of women in the sex industry who have experienced a sexual offence.

Issue Paper A

Working Together to Respond to Sexual Offences: Systems

1. What would make it easier for people who have been sexually harmed to get the supports and services they need, so they can decide whether to report the sexual harm?

Education and better understanding of what constitutes non-consensual services

In order to ensure that women in the sex industry are getting access to the supports and services they need to assist them with reporting sexual harm, it is essential that the women have an understanding of their rights within the industry, which includes information regarding what constitutes non-consensual services.

Previous Project Respect submissions have highlighted that cultural and linguistic diversity is a key driver of workplace sexual harassment within the sex industry. Project Respect estimates that approximately 80% of women working in licensed brothels in Metropolitan Melbourne are women of culturally and linguistically diverse ('CaLD') backgrounds. In the 2017-2018 financial year, Project Respect outreach teams engaged with 248 women, 134 of whom were from CaLD backgrounds. A woman in the sex industry who is from a CaLD background is less likely to understand her rights within the booking, due to language barriers, which is likely to increase the risk of sexual harassment and violence during the booking. Language barriers may also prevent women from being able to safely negotiate a booking or refuse a client if they do not want to engage in a particular request. These same language barriers further isolate women from CaLD background, as they are less likely to report any acts of sexual harassment and violence as a result of these barriers and cultural differences, including shame. Further, outreach teams have been asked by women of CaLD backgrounds, what men can and cannot do within a booking, because they were unaware, with one woman asking if it was normal for a client to physically assault her.

Evidently, in order for women in the sex industry to gain access to the supports and services they need in order to report sexual harm, it is integral that they are made aware of their rights within the industry and understand what constitutes sexual harm.

Appropriate services to report crimes and access to assistance and support

As abovementioned, there needs to be clear communication to workers about what constitutes an offence and or a crime, as well as information about how and where they can report this. One way to assist women in reporting sexual harm is making available a 'how to report' document within brothels and workplaces, which outlines how to report a sexual assault and what the process entails. Many workers do not know what to do and management do not help. This document could also include statements that encourage workers to report, such as explaining that making a report will not affect their employment. Members of the Project Respect Women's Advisory Group ('WAG') indicated that there needed to be a specific phone number, which is readily displayed in brothels for women to be able to contact anonymously if they want to report non-consensual sex work, violence or exploitation. The sex industry is largely 'night-shift' so a 24/7 peer-led helpline would also be useful. Members of the WAG have noted that, currently when you ring a support number you are told to call back at 9am, which can be too late for most people as they will 'clam up' and not take it further. It is also important for it to be peer-led so that workers who are calling know they are speaking to someone who understands their work, barriers and

trauma. In order to address the odd hours of the industry, another suggestion has been the creation of a platform that could enable anonymous reporting via a digital tool or app.

Therefore, it is imperative that women in the sex industry who have been sexually harmed are aware of how to report sexual harm, and are given the appropriate means to do so in order to access support services.

The role of support services

The Fourth Action Plan of the National Plan to Reduce Violence Against Women and their Children highlights how women from CaLD backgrounds experience complex forms of violence and harmful cultural practices, as well as the impact of racism, bias and other forms of discrimination on their help-seeking behaviour and their experience with service providers. Moreover, the Plan identifies as a specific national priority, the need to better equip the service system and communities to address complex forms of violence and harmful cultural practices including early and forced marriage and human trafficking.¹

Nancy* told to a Project Respect worker, response to the question, did you seek help when you experienced family violence?

“No, I have never [did]. Because I always feared being judged. I didn’t really know whom I could talk to or explain my problems to. It was hard for me.”

Removal of stigma

The vast majority of women that Project Respect work with who report having experienced harm or violence describe feeling burdened by stigma and discrimination, which prevents them from connecting with the community and accessing essential services. Members of the WAG have reported feeling as though they had completely fallen through the service system and as such, let down by society while they were experiencing some of their most challenging life moments. They felt that when they did access services, instead of supporting them to be safe and addressing the risks in their lives, these risks and the specific forms of violence they were experiencing were accepted and remained unaddressed. WAG members have reported that they felt this was largely because, as “sex workers” there was a level of risk involved in the work that services accepted from them. One WAG members notes that *“I didn’t think I needed support because I deserved everything that happened to me while I was there.”* As a result, in order for women in the sex industry who have been sexually harmed to receive the support they need, it is important that support services do not further perpetuate the discrimination already felt, and instead support these women from an unbiased and understanding position.

Cultural awareness

A 2015 Australian Institute of Criminology (AIC) report has highlighted how some groups of migrant sex workers experienced difficulties in accessing services, particularly those with low self-rated English proficiency. The barriers to services and information for migrant respondents involved language, a lack of knowledge about what services were available and a fear of using such services; what those fears related

¹ Commonwealth of Australia, Fourth Action Plan of the National Plan to Reduce Violence against Women and their Children, 2019 p. 6

to could not be ascertained from the survey responses. This highlights the important need for multilingual support services and translated information.²

Appropriate understanding of the complexity of trauma

In order for women in the sex industry who have been sexually harmed to get the appropriate support, it is important that support services are familiar with the complexity of trauma that is experienced by women involved in the industry. The exploitation and risk of exploitation experienced by women in the sex industry is complex and more likely to be recognised and responded to in the social services system rather than within a criminal justice context. Even then, many services often aren't equipped to deal with the complexities of the issues.

Support services need to be understanding that due to the normalization of violence it may be a gradual process for women with experience in the sex industry to come to understand their experience as sexual harm. The vast majority of women Project Respect work with report experiencing violence in the sex industry. For many, violence is such an expected, normalized part of the industry it's 'not even worth talking about'. As discussed later in this submission, members of the WAG with experience of providing street based sexual services spoke about regularly experiencing sexual assault but believed that because they had been deemed "sex workers", they often felt invisible and that the violence they experienced was indicative of the work. One WAG member has previously noted: *"I thought the violence I experienced was my fault. Because I was the one who chose to be there. It reinforced the idea that this is what I deserved, and this is what happens to sex workers."* Therefore, it is essential that support services are aware that the normalization of violence towards women in this industry may affect the ability of women who have been sexually harmed to understand that what occurred was wrong, or to view themselves as victims. Further, the complexity of the space and compounding trauma can mean that women with experience of the industry may not respond to sexual trauma in the manner in which other women may respond. For these reasons, specialised support services, that have an understanding of the complexities of issues is necessary, and there needs to be options available in what services are available to them.

Case Study: Psychological Trauma

Because the experiences of women in the sex industry are deemed as work, this can impact on their recovery and healing from sexual violence. As one WAG member states:

"I split myself into Audrey and Jessica. So, Audrey experienced all the trauma working instead of Jessica and Audrey had slept with all those guys not Jessica. So when you asked how many people I had slept with I would have said 12 but through counselling I realised what happened to Audrey was actually happening to Jessica (me) and I actually could not split myself into different people but needed to heal and give myself permission to heal because I now believe I deserved more in life."

This transition in healing and building a healthy internal relationship with oneself can only come from transitioning out of the industry by slowly breaking down the multi-faceted barriers from micro to macro through tailored support from a range of services that understand women's needs in consultation with specialised counselling. This is why services need to be flexible, patient and understand the unique barriers and needs of women in the sex industry and women trafficked."

² Lauren Renshaw et al, 'Migrant sex workers in Australia' (2015) (Research and Public Policy Series no. 131, Australian Institute of Criminology, 1 November 2015) 20 <<https://www.aic.gov.au/publications/rpp/rpp131>>. ('AIC Research Report 2015')

Case Study: The complexities of trauma

Ava*, a woman in her late twenties, from central Asia experienced trafficking and sexual exploitation in her country of origin and was forced into the sex industry by her parents at a very early age. She left her country of origin to remove herself from this exploitation. Ava came to Australia on a student visa. Due to lack of options available, and because she was familiar with it, Ava worked in the sex industry in Australia while studying.

Ava struggled to obtain private rental but was able to obtain share house accommodation. However, whilst living in the share house, Ava was sexually exploited by multiple perpetrators.

She was involuntarily hospitalised due to trauma induced psychosis.

Services, including police and family violence services expressed doubts relating to her story due to her involvement in the sex industry and the number of sexual assaults she had experienced. They had no understanding of the normalisation of violence women with experience in the sex industry sometimes experience, nor any awareness of human trafficking indicators.

During the hospital admission Ava met another perpetrator who befriended her. He offered her accommodation, which, given she had nowhere to go when she was discharged, and due to previous difficulties in securing private accommodation, she accepted.

The perpetrator domestically trafficked Ava for sexual exploitation. Given previous poor responses by services, Ava was too scared to report the situation as she didn't know what would happen to her, or where she would go.

Finally, she reported the exploitation to Project Respect but she did not want to report to the police. Due to existing relationships, Project Respect was able to support Ava into family violence crisis accommodation.

However, as an outcome of ongoing sexual exploitation, Ava exhibited sexualised behaviour. Staff did not apply an intersectional lens and judged her as being unsafe around children due to her involvement in the sex industry and did not want her in the shared crisis accommodation with other women and children.

Ava was moved between different motels and crisis sites which exposed her to a third perpetrator. Ava's temporary visa status means she is not eligible for government housing or any type of government support and it limits her ability to access services.

With the support of Project Respect, Ava has been accepted into medium term housing where she is also provided a financial allowance and meals. This is assisting Ava to recover safely, while also not forcing her to return to the sex industry while she recovers from the sexual trauma.

This housing arrangement has been fostered outside of usual eligibility requirements. Ava currently has an application for a protection visa submitted, however it could be years until Ava receives an outcome of her visa status, until this point Ava will remain in medium term/transitional housing.

Increased oversight of operators and management

To ensure that women in the sex industry are receiving the appropriate support in circumstances of sexual harm, it is important that brothel owners and operators are educated on what constitutes sexual harm, its prevalence within the sex industry and how to appropriately respond to and report it.

The Consumer Affairs Victoria ('CAV') website states that licensees and managers are required to "provide a safe working environment, free from violence and intimidation and without risk to health for employees, sub-contractors and clients. This includes allowing a sex worker to stop working if they feel unsafe. Furthermore, CAV states that sex workers are at high risk of physical and sexual assault, of sexual behaviours designed to make victims feel "uncomfortable, frightened (and) threatened"³ and that there is a high risk of unconsented sexual activities.

Further, CAV states that brothel licensees and managers "must call 000 immediately if a sex worker makes a sexual assault complaint" however, our work with women indicates that the response by Victorian brothel management to appropriately respond to sexual assault allegations is inadequate. Brothel outreach teams were informed of 16 instances where management had failed to appropriately uphold their requirements in providing a safe working environment. Members of the WAG have reported that venues may refuse to contact the police or an ambulance because if a certain number of reports are coming from a particular venue, it can lose its liquor license. Further, any police presence at a venue can discourage clients. We were informed of one occasion of a woman who had informed management that the client had removed the condom during the booking. Management informed her that she needed to call the police herself if she wanted to report it. The woman was from a CaLD background, with limited English skills, and very likely a limited understanding of her rights, and subsequently did not report the assault. Outreach teams have also been asked by women they engage with, what is acceptable within a booking and what a client can and cannot do because they have not been informed of their rights by management.

"One woman who started work at a legally registered massage parlour was taken into a private room by the licensee and told to give him a blow job (oral sex without a condom) in order to keep her job. She did as he asked because she needed the work, and was too intimidated to say no. She later learned this was a common occurrence."

Women in the WAG have reported that managers of venues such as brothels and strip clubs can respond poorly to reports of sexual offending occurring in their venues. One of the reasons for this is the problematic attitudes towards workers, such as not believing the worker, making the worker feel guilty, and minimising the offending behaviour ('It was only a slap on the ass'). Project Respect was informed during outreach that in some brothels, management allow clients who are known to have perpetrated sexual assault against workers to enter the brothel and see another worker, in the interest of securing the booking. In one instance, a woman who was sexually assaulted by a client was forced by management to 'intro' to him the next time he entered the brothel. This is reflective of the sentiment expressed by WAG members that it is believed managers will put financial interests ahead of the safety and well-being of

³ Consumer Affairs Victoria (2018) Occupational health and safety (OHS) and cleaning your sex work premises. [online] Available at: <https://www.consumer.vic.gov.au/licensing-and-registration/sex-work-serviceproviders/running-your-business/occupational-health-and-safety-and-cleaning>

workers, which includes not banning known clients who pose threats to workers because the client spends money at the venue.

Further, the use of signage within brothels such as 'Sexual assault is illegal. We will call the police' could warn, deter some people and prevent sexual assault. Clients know that workers fear the police and will not report any sexual offending. Clients use this against workers and thus have power over them. Signage such as this could also empower workers to point to them if clients are not respecting their boundaries and conditions of service. One WAG member described a brothel with a sign that read 'if you sexually assault someone, you will be fined \$500.' When she asked workers at this venue if they had experienced sexual assault at work they said 'no'. However, such signage is rare.

Evidently, in order to ensure that women in the sex industry are supported and given the appropriate tools to report instances of sexual harm, it is imperative that brothel operators and owners comply with both their legal obligation to report and respond to sexual assault in the workplace as well as CAV standards and put these measures in place.

Recommendations

- Ensuring women who work in the sex industry are aware of their rights within the industry and understand what constitutes sexual harm.
- Provide the appropriate services to allow women in the sex industry who have been sexually harmed to report and access support.
- Ensure that support service systems are equipped to assist women from multicultural backgrounds and women who have experienced complex trauma, without stigma and discrimination.
- Increased oversight of brothel operators and management to make sure they are both aware of what constitutes sexual harm and complying workplace standards in reporting sexual harm and with CAV Standards.

3.How can the relationship between family violence services and the sexual assault system be improved, so that the justice system responds effectively to sexual harm?

Women in the sex industry will likely experience multiple forms of abuse, including family violence. Women in the sex industry are disproportionately affected by family violence which can lead to a sense of normalisation of the violence.

Improving the identification of family violence in the form of sexual assault

The specific types of family violence that women in the sex industry are exposed to are often not specialist family violence services and other parts of the family violence system as forms of family violence.⁴ This undermines a woman's ability to remove themselves from the violence and be confident the perpetrator will be held to account. This may mean that women in the sex industry experiencing family, and other violence, are less likely to access services, and so are at greater risk of being subjected to ongoing and escalating violence. Different family violence services must continue to

⁴ Project Respect Submission 'Inquiry into family, domestic and sexual violence' House of Representatives Standing Committee on Social Policy and Legal Affairs, July 2020 pg. 14.

strengthen their communication with one another to provide an integrated model of support for women in the sex industry who experience family violence.

Accordingly, in addition to well recognised indicators of family and domestic violence, women in the sex industry report that they experience violence in other specific ways, most commonly:⁵

- Being forced by their partner into the sex industry and not being allowed to exit the industry.
- Being forced to provide sexual services in their homes.
- Having their wages from the sex industry taken from them by their partner.
- Being threatened by their partner disclosing or threatening to disclose that they are or have previously worked in the sex industry to others, including to their children, other family members, friends, children's teachers or school, employers, the police, Child Protection, the Children's Court, the Magistrates Court, the Family Court and the Australian Taxation Office.
- Experiencing verbal abuse from their partner or ex-partner in terms of their involvement in the sex industry (e.g., calling them a 'whore' or a 'slut').
- Being coerced by their partner into having unwanted sex or types of sex, including with partner's friends.
- Substance-use coercion.

Women in the sex industry seeking assistance from services and the sexual assault system

Women in the sex industry who experience family violence may fear being treated differently and more harshly by services intending to help women experiencing family violence; including family violence services, lawyers, courts, Child Protection, police and health practitioners.

The Victorian Royal Commission into Family Violence report ('RCFV Report') also found that women face particular challenges when seeking support before, during and after experiencing the violence, which is compounded by the stigma and discrimination they experience due to their involvement in the sex industry.

Case Study: Greater integration of services to increase support provided to women

Maree* is Australian born, and was forced to enter the sex industry by her partner, and experienced significant economic and financial, physical, verbal and psychological abuse, and had almost every aspect of her life controlled for over 15 years. He moved Maree around Australia to work in the high-end escort industry, and at one point, made plans for her to go overseas escorting.

Maree did not report any of what she experienced to the authorities. Women in the sex industry face additional barriers when reporting crimes to authorities and accessing support services. These barriers often deter women in the sex industry from accessing services and seeking support. When she did finally report and attempt to take an IVO out, there were a series of events which happened that led to her not being supported to take out the IVO and the cycle of abuse continued.

⁵ Project Respect Submission 'Inquiry into family, domestic and sexual violence' House of Representatives Standing Committee on Social Policy and Legal Affairs, July 2020 pg. 14.

Eventually, Maree's experience was acknowledged as family violence. Project Respect would also like to note that, this is also an example of the intersection between family violence and trafficking. In this instance, trafficking within the domestic context is largely overlooked.

The case study of Maree* illustrates the need to increase awareness and understanding of the intersection between family violence and various forms of sexual harm experienced by women in the sex industry. Further, there needs to be more training and information about trafficking and sexual assault amongst family violence workers to ensure suitable referrals to the appropriate support systems.

Greater co-ordination between family violence services and the sexual assault system

The following case study demonstrates how greater co-ordination between the police and the family violence services could have assisted the police to better understand Ava's situation, detailed below in the case study.

As stated in the RCFV Report "There are serious shortcomings in how police and the family violence system respond to the experience of women who work in the sex industry. In light of this, the Commission recommends that Victoria Police amend its Code of Practice for the Investigation of Family Violence to describe the additional challenges faced by women who work in the sex industry when reporting family violence to the police, and how to provide support when investigating family violence perpetrated against women."⁶ While it is noted that this Recommendation has been implemented, women with experience of the sex industry continue to disclose to Project Respect that they face stigma and discrimination when reporting to authorities.

Case Study: Limitations of the system to adequately respond to the intersection of women in the sex industry and family, domestic and sexual violence

Ava*, a woman in her late twenties, experienced trafficking and sexual exploitation in her country of origin and was forced into the sex industry by her parents at a very early age. She left her country of origin to remove herself from this exploitation. Ava came to Australia on a student visa. Due to a lack of options available, and because she was familiar with it, Ava worked in the sex industry in Australia while studying. Ava struggled to obtain private rental but was able to obtain share house accommodation.

However, whilst living in the share house Ava was sexually exploited by multiple perpetrators. She was involuntarily hospitalized due to trauma induced psychosis. Services, including police and family violence services expressed doubts relating to her story due to her involvement in the sex industry and the number of sexual assaults she had experienced. They had no understanding of the normalisation of violence women with experience of the sex industry sometimes experience, or any awareness of the indicators of human trafficking indicators.

During the hospital admission Ava met another perpetrator who befriended her. He offered her accommodation, which, given she had nowhere to go when she was discharged, and due to previous difficulties in securing private accommodation, she accepted. This perpetrator domestically trafficked

⁶ State of Victoria, Royal Commission into Family Violence: Summary and recommendations, Parl Paper No 132 (2014–16)

Ava for sexual exploitation. Given previous poor responses by services, Ava was too scared to report the situation as she didn't know what would happen to her, or where she would go.

Finally, she reported the exploitation to Project Respect but she did not want to report to the police. Due to existing relationships, Project Respect was able to support Ava into family violence crisis accommodation. However, as an outcome of ongoing sexual exploitation, Ava exhibited sexualised behaviour. Staff did not apply an intersectional lens and judged her as being unsafe around children due to her involvement in the sex industry and did not want her in the shared crisis accommodation with other women and children. Ava was moved between different motels and crisis sites which exposed her to a third perpetrator.

Ava's temporary visa status means she is not eligible for government housing or any type of government support and it limits her ability to access services. With the support of Project Respect, Ava has been accepted into medium term housing where she is also provided a financial allowance and meals. This is assisting Ava to recover safely, while also not forcing her to return to the sex industry while she recovers from the sexual trauma.

This housing arrangement has been fostered outside of usual eligibility requirements. Ava currently has an application for a protection visa submitted, however it could be years until Ava receives an outcome of her visa status, until this point Ava will remain in medium term/transitional housing.

Recommendations

One of the most critical changes to the family violence service system which need to occur in order to assist the justice systems response to sexual harm is increased funding from the Victoria Government. It would be advantageous that the Victorian Government adequately funds organisations that are supporting women in the sex industry and survivors of sexual assault.

As stated prior, women in the sex industry can bear a higher risk of experiencing family violence than other women in the broader Australian community, yet these women remain largely absent from the reform agenda and are unrecognised under the MARAM framework. The inclusion of women in the sex industry in the resources, supporting materials, and risk assessments released under the MARAM framework would enhance family violence and sexual assault services understanding of the forms of violence women in the sex industry experience, and foster greater referral pathways between the services to meet the nuanced needs of women with experience of the sex industry.

Further recommendation that the state government recognise and fund Project Respect as a specialist agency addressing violence against women who are in the sex industry, including family violence, as a part of the Victorian family violence system.

7. What are the opportunities for, and benefits of, improving data, research and evaluation in relation to sexual offending?

Currently there is limited up to date research of sexual violence against women who are in the sex industry. This may be due to the sensitive nature of the data and the difficulty in conducting research on women in the sex industry.

The Australian Institute of Health and Welfare published a report on Sexual Assault in Australia, in August 2020, which indicates notable gaps in national data relating to people who have experienced sexual violence and data associated with legal and community support services.⁷ The Sexual Assault in Australia 2020 report makes reference to the complex barriers for collecting information on sexual assault for specific population groups. Even when information is collected for specific population groups, the data is often not robust due to small sample sizes or data quality issues.⁸

Further research and data on sexual offences within the sex industry for both women in private workplaces and women working on the street would improve and benefit the sexual assault system and other support systems' understanding on the extent of sexual violence within the sex industry. Increasing the data collection and research on sexual assault within the sex industry will assist in the implementation of strategies to rectify the offending.

During Project Respect's outreach program in the 2018-2019 year, 229 women engaged with Project Respect members in in-depth conversations regarding assaults they experienced whilst working in licensed brothels. More research needs to be undertaken to build the data to improve the community's awareness of the violence and sexual harm women in the sex industry experience and are subjected to.

Another issue surrounding data collection of sexual assault within the sex industry is the inability of many women to identify violence. For some women in the sex industry, violence may be so common that it is unsurprising. Various women that Project Respect assisted have stated that there was no point recognizing their experience as sexual violence given the women did not believe they could escape the violence. This may mean that women in the sex industry experiencing sexual offending are less likely to access services. Therefore, this sexual violence can go un-reported which results in less data regarding sexual violence being accumulated. Further research and evaluation is needed to explore this issue in the Australian context.

Expanding the amount of data and research on sexual offending within the sex industry will illustrate common trends and behaviors. By example, data reveals the impact pornography is having on an increase in violence and sexual harassment towards women in the sex industry.² Additional data evaluation would improve the understanding of any correlation between rougher sexual activities which may lead to sexual violence by clients towards workers.

Recommendations

An increase in funding organisations and researchers to conduct studies on sexual offending in the sex industry will consolidate the issues and conditions women face through data and evidence.

It is also recommended that the Australian National Research Organisation for Women's Safety (ANROWS) investigate what measures, statistics and data about violence against women who are in the sex industry to then be included in the Victorian Family Violence Index, and how such measures, statistics and data can be collected while protecting the privacy and safety of women in the sex industry.

⁷ Australian Government, Australian Institute of Health and Welfare 'Sexual assault in Australia' August 2020 page 14.

⁸ Australian Government, Australian Institute of Health and Welfare 'Sexual assault in Australia' August 2020 page 14.

The Australian Human Rights Commission conducts data collection from all States and Territories in Australia to determine the prevalence of sexual harassment and assault within the sex industry. Continuous data collection of this nature is imperative to illustrate these trends.

8. How well does the sexual assault system work? How would you improve it?

Project Respect's data from 2018-2019 support and outreach programs

Project Respect's individual support to women (total n=35) with experience of the sex industry in 2018-2019 indicated:

- 71% (n=25) disclosed they had experienced some form of violence and,
- 57% (n=20) disclosed experiencing family violence
- 51% (n=18) experienced sexual assault

There is limited research available about the crimes and forms of sexual crimes experienced by women involved in the licensed sex industry setting in Victoria. Speaking with women during our outreach program in the 2018-2019 year, of the 229 women we had in-depth conversations with:

- 24% (n=55) women met during outreach to licensed brothels disclosed experiences of violence
- 19% of these experiences were in the workplace and included
- 14% (n=6) women had clients remove condoms during the booking
- 7% (n=3) raped by their clients
- 5% (n=2) sexual assault (not defined)

None of the women who disclosed they had experienced some form of sexual harassment or sexual assault reported the violence to the police.

Reporting sexual assault

Offences need to be clearly communicated to sex industry business owners and there needs to be measures and processes in place under licensing requirements and OH&S standards which aligns with WorkSafe Legislation about what their obligations and requirements are to report suspected sexual exploitation and violence.

If a woman is an unregistered private worker or engaged in street work, she is likely to be criminalised for working illegally and therefore less likely to report a sexual assault. Conversely, women in the licensed industry can be discouraged from reporting sexual assaults as they are unable to report anonymously.

Management dealing with sexual assault

Mandated training

Development of mandated training for all people involved in the sex industry including sex industry business owners and managers as well as individual sex workers. This training should cover topics such as workplace health and safety, develop appropriate induction for new workers and where and how they can learn their rights and access support, skills development around how to negotiate respectful and consenting sexual services and mandated reporting requirements for sexual harassment and sexual assault.

Exploitation of migrant women in the sex industry

Investigations by the Fair Work Ombudsman suggest that migrant workers are particularly vulnerable to workplace exploitation which can take the form of sexual assault. This can be due to a fear of authorities, cultural and linguistic barriers, involvement in an industry which is heavily stigmatised and sometimes illegal in their country of origin and, in some cases, their concerns about preserving their visa status. Project Respect's own work has indicated many women are barred from speaking out and/or seeking assistance about sexually exploitative conditions.

These factors, combined with the failure of state and territory, as well as commonwealth enforcement and regulation departments to adequately regulate a high-risk industry have been utilised to develop a sex industry business model which actively exploit migrant worker vulnerabilities.

The 2015 Australian Institute of Criminology, Migrant Sex Workers Report, highlighted how some groups of migrant sex workers experienced difficulties in accessing services, particularly those with low self-rated English proficiency. The barriers to services and information for migrant respondents involved language, a lack of knowledge about what services were available and a fear of using such services. This highlights the important need for multilingual support services and translated information.

These barriers to reporting incidents of sexual violence and exploitation need to be continuously worked upon at a state and commonwealth legislative level, along with further funding being provided to organisations which provide referral and support to women working in the sex industry who have been sexually assaulted.

Recommendations

Sex industry business owners should be mandated to induct new workers and undergo their own mandated training to equip them with the skills to better respond to sexual assaults within their workplaces. Reporting by management also needs to be mandated and enforced, it cannot be left up to the owner or operator to do as they deem fit.

Issue Paper B

Sexual Offences: Key Issues in the Criminal Justice System

1. Is there a need to improve attitudes towards victim survivors or the understanding of sexual harm within the criminal justice system? If so, how?

Stigma and discrimination women in the sex industry experience

As Project Respect noted in our submission to the RCFV, many women in the sex industry experience unique forms of violence and face particular barriers to accessing support. They experience and fear being treated differently and more harshly, including by services intended to assist them. At times, discrimination is significant, and the consequences are dangerous.

It was noted in the abovementioned submission as well as Project Respect's 2020 Submission to Review Decriminalisation of Sex Work that one of the positive changes brought about by decriminalisation of prostitution in many parts of Australia has been the challenge to the stigmatisation of women in the sex

industry. However, stigma has not been eradicated. A study of 97 women in the sex industry in licensed brothels found that 47% were worried about community attitudes to prostitution⁹. Focus groups conducted with a small group of women in the sex industry by found that the women 'agreed that despite the legalisation of sex work, there had not been an improvement in society's perception of their work'.¹⁰ Respondents felt that they were forced to live a 'double life' and were forced to lie to family and friends about their job.¹¹ Another study found that 52 of 55 women in the sex industry surveyed kept their work secret from some or all people in their private lives.¹² This fear of judgment, which stems from negative attitudes towards women in the sex industry has the effect of making women who work in this industry more vulnerable, and specifically, less likely to report incidents of sexual harm due to the fear of lack of support.

Members of the WAG with lived experience of providing street-based sexual services spoke about the high risks involved in this space and members spoke about regularly experiencing sexual assault. Yet, because they had been deemed "sex workers" they often felt invisible and that the violence they experienced was indicative of the work. One WAG member has previously noted: *"I thought the violence I experienced was my fault. Because I was the one who chose to be there. It reinforced the idea that this is what I deserved, and this is what happens to sex workers."* It is evident through this statement and the studies mentioned above that discriminatory attitudes directed towards women in the sex industry on the basis of their work are present, and that they must be improved if these women are to be adequately protected by the criminal justice system.

Specific forms of sexual harm

In order to improve attitudes towards women in the sex industry who are victims of sexual harm, it is necessary for there to be greater awareness of the specific ways that sexual harm manifests in this industry. It is important that there is a greater understanding of the specific forms of sexual harm that women in the sex industry are subjected to. During outreach programs to licensed brothels in 2018-2019, women disclosed experiences of sexual violence that included being strangled or bitten by clients. In addition, women in the sex industry have reported sexual harm in the form of non-consensual sexual acts, as well as intimate partners forcing them to work within the sex industry. Another type of sexual assault that is experienced by women in the sex industry and which is becoming more prevalent is sexual assault by "stealthing", discussed below.

Sexual assault - "stealthing"

Stealthing is defined as the non-consensual removal of a condom and is an example of a specific type of sexual harm that women in the sex industry are particularly vulnerable to. It is also a form of sexual harm that must be appropriately addressed within the criminal justice framework to ensure that it is not

⁹ Groves, J., D.C. Newton, M.Y. Chen, J. Hocking, C.S. Bradshaw, and C.K. Fairley (2008). "Sex Workers Working within a Legalised Industry: Their Side of the Story", *Sexually Transmitted Infections* 84: 393–4.

¹⁰ Begum, S., J. S. Hocking, J. Groves, C. K. Fairley, and L. A. Keogh (2013). "Sex workers talk about sex work: Six contradictory characteristics of legalised sex work in Melbourne, Australia", *Culture, Health & Sexuality*, 15(1):85–100

¹¹ Ibid.

¹² Sanders, T. (2004). "A Continuum of Risk? The Management of Health, Physical and Emotional Risks by Female Sex Workers", *Sociology of Health and Illness*, 26(5): 557–74.

overlooked or normalised. It was recommended in Project Respect's Submission to Review Decriminalisation of Sex Work that sexual assault by removal of condom known as "stealth" should be included as an offence under Part 1 Division 1 of Offences Against the Person of the Crimes Act.

This form of sexual assault is increasing exponentially and 14% of women Project Respect met during brothel outreach in 2018-2019 experienced the removal of a condom during a booking. Women disclosed that they were not supported by management in these circumstances. They reported the client was often given their money back by management after making a complaint when the woman stopped the booking, or, the woman was forced back into the booking to complete, despite the assault that had transpired. Reports from women indicate that a majority of managers do not perceive the removal of a condom as sexual assault and due to this, it is highly underreported.

Inclusion in violence against women campaigns and greater visibility

Despite the criminalisation of the specific forms of exploitation and violence that women in the sex industry are at risk of being exposed to or experiencing, sex workers and women in the sex industry are wholly missing from prevention of violence against women initiatives and strategies. This results in a lack of broader public and social planning and responses to these forms of violence against this specific group of women.

Therefore, in order for attitudes to improve towards women in the sex industry who are victims of sexual violence or harm, there should be greater visibility of women with experience of the sex industry within mainstream violence against women campaigns. This can be assisted by increased visible rejection of these forms of sexual violence by public and community leaders and in the media, including awareness campaigns about zero tolerance of sexual violence towards sex workers and women involved in the sex industry. Inclusion in such campaigns can help to ensure that the forms of sexual violence that women in the sex industry experience are not treated as something separate or subordinate and are appropriately recognised and dealt with within the criminal justice system.

Recommendations

It is evident that the discriminatory attitudes directed towards women in the sex industry can act as a barrier to them seeking help within the criminal justice system when they are sexually harmed.

In order to prevent this, it is necessary to improve the attitudes towards women in the sex industry within this system. This can be assisted through increased education about the specific forms of sexual harm that women in this industry are exposed to, as well as the incorporation of these offences within the criminal justice system and the Crimes Act. Further, attitudes towards the sexual harm experienced by women in the sex industry can also be improved through greater awareness and visibility which can be achieved through greater inclusion within violence against women campaigns.

6. How well are support programs for people who have experienced sexual harm working? How can they be improved?

Support programs are imperative for women in the sex industry who have experienced sexual harm. It is particularly important that these support programs are both visible and easily accessible for these women. Women within the sex industry who have experienced sexual harm face specific barriers to accessing

support, and two issues that have frequently arisen throughout Project Respect's engagement with women in the sex industry are multicultural barriers and fear of discrimination.

Project Respect estimates that approximately 80% of women working in licensed brothels in Metropolitan Melbourne are women of culturally and linguistically diverse ('CaLD') backgrounds. In addition, a 2015 Australian Institute of Criminology report has highlighted that some groups of migrant sex workers have experienced difficulties in accessing services, particularly those with low self-rated English proficiency.¹³ It is therefore clear that support programs for women in the sex industry who have experienced sexual harm must be culturally sensitive and diverse, which includes access to translated information. Further, the vast majority of women that Project Respect work with who report having experienced harm or violence describe feeling burdened by stigma and discrimination, which prevents them from connecting with the community and accessing essential services. This is compounded by the complexity of the trauma experienced, and common feelings of normalization of sexual violence due to societal attitudes of the sex industry. As a result, it is also integral that support programs are understanding and inclusive, and do not further exacerbate the discrimination felt by these women.

Recommendations

- Support programs are visible and accessible to women in the sex industry who have experienced sexual harm.
- Support programs are culturally diverse and offer translated information.
- Support programs engage with women in an understanding and non-discriminatory manner.

Issue Paper C

Defining Sexual Offences

1. Is there a need to change any of Victoria's sexual offences, or their application? If so, what changes?

The current State legal frameworks are not adequate to specifically deal with the sex industry to prevent sexual harm within sex industry businesses as the nature of the work can, at times, be incompatible with legal frameworks.

Crimes Act 1958 (Vic)

The inclusion of explicit offences relating to the exploitation of an individual in sex work and the inclusion of the commercial sex industry under the *Crimes Act* (s 53A – s 53G) manifests the idea that the commercial sex industry must have robust measures and standards in place to be able to monitor conditions and expose situations where crime or violation of these laws are occurring.

Relevant provisions include:

(s)53B - Using force, threat etc. to cause another person to provide commercial sexual services;

¹³ Lauren Renshaw et al, 'Migrant sex workers in Australia' (2015) (Research and Public Policy Series no. 131, Australian Institute of Criminology, 1 November 2015) 20 <<https://www.aic.gov.au/publications/rpp/rpp131>>. ('AIC Research Report 2015')

(s)53C - Causing another person to provide commercial sexual services in circumstances involving sexual servitude;

(s)53D- Conducting a business in circumstances involving sexual servitude;

(s)53E - Aggravated sexual servitude;

(s)53F- Deceptive recruiting for commercial sexual services; and

(s)53G - Aggravated deceptive recruiting for commercial sexual services.

Whilst the inclusion of these offences within the *Crimes Act* provides the appearance of significant protections for people involved in the sex industry, the reality is that there is a severe deficit in the operationalisation of these offences including establishing what constitutes sex work by consent, and the threshold in understanding when an act becomes exploitation, and subsequently not sex work, but a crime. Our work indicates that the lack of clear understanding in the threshold of what constitutes consensual sex work and what constitutes an offence is a significant contributing factor in the inability to be able to sufficiently operationalise legislation.

Sex Work Act 1994

The Victorian sex industry is legislated by the *Sex Work Act 1994* and subsequent *Sex Work Regulations 2016*. The *Sex Work Act (1994)* and the definition of sexual services within is considered outdated, given the growth of the industry over the past 20 years. The definition is too vague, which raises questions about what constitutes a sexual service and what constitutes sex work. It was also developed prior to the arrival of the internet and this is reflected in the definition of sexual services which states to “view any of the following occurring in *their presence...*”. There is an assumption that in “their presence” requires physical proximity given that the *Sex Work Act 1994* predates the internet. This therefore means that the definition of sexual service precludes any virtual sexual services, such as camming and phone-based services which is an ever-increasing space, with its own particular suite of safety issues. The development of a better, more comprehensive definition is required to ensure rights are protected across a broad range of services and areas to protect women from sexual and gender-based violence.

Outside of sexual health and hygiene, the Act provides few protections to the safety of workers. Many of the specific worker safety features, such as duress alarms in each room outlined in the *Sex Work Regulations (2016)* were repealed in 2017. The reason cited by Consumer Affairs Victoria, the regulatory body, was these specific regulations were covered in other legislation, including *The Occupational Health and Safety Act (2004)* and the *Public Health and Well-Being Act (2008)*. However, the sex industry, and these industry specific safety measures were not mentioned in the *Occupational Health and Safety (2004)* or subsequent 2017 Regulations. While the *Public Health and Well-Being Act (2008)* does briefly mention the sex industry, its inclusion does not adequately address the regulations repealed in the *Sex Work Regulations* in 2017.

Recommendations

Crimes Act 1958 (Vic)

- Develop a clear understanding of the definition of “commercial sexual services” and whether offences relating to “commercial sexual services” include people providing sexual services in a street setting to ensure they are provided protection under those offences.

Sex Work Act 1994 (Vic)

- Ensure there are provisions which provide protections and ensure the safety of workers.

2. How well is Victoria’s model of communicative consent working? Should there be any changes?

Section 36(2)(l) of the *Crimes Act 1958* stipulates that a person does not consent “if the person does not say or do anything to indicate consent to that act”. This can be said to codify what has been termed the communicative model of consent whereby communication of consent is required.

One issue relating to Victoria’s communicative consent model within the sex industry is the false expectation that clients believe they have the power to do whatever they like with the women during the bookings given they paid for it.

Women met during brothel outreach in 2017-2018 confided in Project Respect workers and stated the following:¹⁴

- “When the client gives you a few hundred dollars, they think they can do whatever they like.”
- “Because the client paid the money, I thought that he had the right to do whatever he liked.”

During the 2017-2018 outreach, women stated that men regularly touch or attempt to touch their breasts or buttocks during the introduction, without consent. The clients will then not follow through with the booking. Women also reported that clients are repeatedly requesting and attempting unprotected services, despite this being against the law.

Project Respect engaged with 16 women during the 2017 – 2018 outreach who disclosed various forms of sexual assault and serious forms of sexual harassment endured during their bookings; clients removing their condoms without consent, being harassed to perform natural services or anal sex and clients who have been raped.

There were also reports of increasing physical abuse including biting, slapping, hitting, hair pulling and rough sex which appeared to be prevalent in nearly every booking.

The 2017-2018 outreach program demonstrated that there appears to be a lack of clear understanding in the parameters of consensual sex work. What constitutes an offence is a significant contributing factor in the inability to be able to sufficiently operationalise the current legislation. Therefore, developing very specific and clear definitions, operationalising the definition of consent, as well establishing a framework to be able to measure the extent to which the definitions and provision within legislation have been met is essential within the sex industry businesses as well as for individuals involved in the industry.

¹⁴ Australian Human Rights Commission, National Inquiry into Sexual Harassment in Australian Workplaces, Project Respect submission (year?) pg 4

A definitive understanding of what constitutes sex work as a form of labour that meets labour standards is required. Further, what constitutes consent to enter into sex work, and consent during the provision of a sexual service, and ensuring these definitions are in line with the broader standards and definitions of work, consent, crimes and gender equality initiatives is imperative.

Pursuant to s36A of the *Crimes Act 1958*, the notion that a client is not guilty if they *reasonably believed* a woman working in the sex industry consented may be problematic when there is ambiguity surrounding what is understood as consensual and what isn't. Communicative consent may be ambiguous for women with experience in the sex industry as they may consent to certain sex acts, but not others during the provision of the service.

Recommendations

Crimes Act 1958 (Vic)

In the *Crimes Act 1958*, development of a clear understanding of how "consent" as defined in the Crimes Act applies to people providing sexual services, and also to women who are substance-use affected in the context of work.

Sex Work Act 1994 (Vic)

Implement in the *Sex Work Act 1994* a clear definition of what constitutes "non-consensual" sex work and how this definition is to be operationalised and enforced, in any piece of legislation.

Family Violence Protection Act 2008 (Vic)

The Family Violence Protection Act 2008 (Vic) Part 2, Interpretations (s)5 *Meaning of family violence* be amended to include examples of specific forms of family violence that are perpetrated towards women with experience of the sex industry that are also considered offences in the Sex Work Act 1994 (Vic) including:

- a. Being forced to work in the sex industry;
- b. Not allowing a woman to leave the sex industry;
- c. Being forced to provide sexual services in their homes; or
- d. Threats to or outing a woman's involvement in the industry.

Implementing consent forms and hotlines in brothels

Consent for the sexual act(s) women in the sex industry undertake need to be explicit. Women's Advisory Group (WAG) members discussed the need for a consent form or something to this effect to be filled in when clients enter a brothel and then when specific service is undertaken with a woman. It's not sexy, but it needs to be done.

There needs to be clear communication to all workers about what constitutes an offence or a crime and what and where they can report. Members of the WAG indicated there needed to be a specific phone number, which is readily displayed in brothels for women to be able to contact anonymously if they want to report non-consensual sex work, violence or exploitation.

3. Is there a need to change any of Victoria's technology-facilitated sexual offences, or their application? If so, what changes?

Technology facilitated abuse is a highly complex issue, combining issues of gender inequality, sexualised violence, internet regulation, internet anonymity, privacy, copyright, ethics and the rights of women in the sex industry.¹⁵ The sex industry is unusual in relation to technologically facilitated abuse, as few other industries or workplaces require sexual interactions. The nature of the sex industry can therefore makes women in the sex industry more vulnerable to technology facilitated abuse than might be experienced in other industries.

Project Respect recognises the use of technology as a mechanism for perpetrating violence and harassment against women in the sex industry. Our work with women indicates technology-facilitated abuse impacts on women in the sex industry in four ways: in the context of family violence, with clients in the sex industry, in their role as independent business operators and, in the context of women trafficked for sexual exploitation. This is through threats to out and/or expose women by clients who have images, filming during bookings without consent, advertising/posting services and phone numbers online without consent and taking images of women and then using this as a form of power and control in situations of trafficking.

Brothel outreach data obtained by Project Respect in the 2017-2018 financial year¹⁶ suggests that the prevalence of technology used to harass women in the sex industry is increasing. Outreach teams observed signage stating, "no mobiles", "no phone filming", "no photos" and "no videos" on 31 brothel visits. This suggests that clients are attempting to use their phones to take photos or film women, without their consent, within the booking. Furthermore, we have been informed by women we support that they often receive harassing, unwelcome phone calls and text messages from their clients. Project Respect has also been informed that clients have waited for women to finish their shift and have then attempted to follow them home.

Further, the increased use of online platforms to provide sexual services exposes women to increased risk of experiencing technology-facilitated abuse. Some women are moving their services online with limited technological knowledge, and, beyond simple privacy settings, are not aware of some of the risks the online space has in terms of technology facilitated abuse. As a result, for women in this specific form of the industry, training and education needs to go beyond the general e-Safety training to be able to build the knowledge and capacity of women to be able to keep themselves safe while operating a business online.

¹⁵ Project Respect submission to the Senate Legal and Constitutional Affairs References Committee Inquiry into the 'Phenomenon colloquially referred to as 'revenge porn', which involves sharing private images and recordings of a person without their consent, with the intention to cause that person harm'. Katherine McCormack. 14 January 2016

¹⁶ Project Respect 2018, Project Respect Annual Report 2017-2018

Case study: intersection of the sex industry and technology facilitated abuse

Mary* was involved in the sex industry in her country of origin. She was experiencing significant family violence and decided to come to Australia on a temporary working visa. She secured a job in a rural area prior to arriving. On her first day of work, she was pulled aside by her boss, who informed her that he had been sent a video of her performing sexual services on a client which had been sent by her former partner as a means to discredit her. Mary subsequently experienced ongoing technology facilitated abuse via phone from her ex-partner. Local police said there was nothing that could be done as the perpetrator was overseas

Evidently, more needs to be done to protect and prevent this form of technology-facilitated sexual offences against women in the sex industry. This form of harm is highly underreported and often not considered in the realm of violence or sexual harm perpetrated against women. There is a need for specific training and resources that go further than simply building the capacity of women to be able to keep themselves safe, and instead focus on the perpetrators of violence. To ensure that the risk of women being exposed to this form of harm is minimised, it is essential that this form of abuse is criminalised under the Crimes Act.

Recommendations:

- Technology facilitated abuse and violence in the commercial sex industry setting needs to be included as an offence in Part 1. Division 1 – Offences Against the Person of the Crimes Act.
- The availability of training and education for women working in the sex industry to build the knowledge and capacity to keep themselves safe while operating a business online.

4. Are new offences or changes to offences needed to address existing or emerging forms of sexual harm? If so, what new offences or changes?

In Victoria there is a severe deficit in operationalisation of the offences found in the different pieces of legislation to not only monitor and investigate, but also in being able to establish what constitutes sex work by consent, and the threshold in understanding when it becomes exploitation, and subsequently not sex work, but a crime. Our work indicates that the lack of clear understanding in what the threshold of what constitutes consensual sex work and what constitutes an offence, as listed above, is a significant contributing factor in the inability to be able to sufficiently operationalise legislation. Further, understanding and awareness of these crimes within the broader services system, beyond specialised agencies and enforcement groups often means that the offences are not recognised.

Street based protections

Most of the offence relate to “commercial sexual services”. As such, what protections are afforded to people who are providing services on the street? If street-based sexual services aren’t covered under the definition of commercial sexual services, then the only specific sex work specific protections afforded to people providing street-based services is (s)16 of the Sex Work Act 1994 relating to offensive behaviour towards a sex worker. This is conceivably the at most risk group of women in the most high-risk area of

the sex industry. Greater levels of protection, and the implementation of positive measure to do so, need to be provided to women to keep them safe.

Sexual assault – “stealthing”

Sexual assault by removal of condoms is increasing exponentially. 14% of women Project Respect met during brothel outreach in 2018-2019 year experienced the removal of a condom during a booking. Women disclosed that they were not supported by management in these circumstances. They reported the client was often given their money back by management after making a complaint when the woman stopped the booking, or, the woman was forced back in to the booking to complete, despite the assault that had transpired.

Reports from women indicate that majority of manager do not perceive the removal of condom as sexual assault. Due to this, it is highly underreported.

Technology based offences

Technology facilitated abuse is a highly complex issue, combining issues of gender inequality, sexualised violence, internet regulation, internet anonymity, privacy, copyright, ethics and the rights of women in the sex industry.¹⁷ The sex industry is unusual in relation to technologically facilitated abuse, as few other industries or workplaces require sexual interactions. The nature of the sex industry therefore makes women in the sex industry more vulnerable to technology facilitated abuse than might be experienced in other industries.

Project Respect recognises the use of technology as a mechanism for perpetrating violence and harassment against women in the sex industry. Our work with women indicates technology-facilitated abuse impacts on women in the sex industry in four ways: in the context of family violence, with clients in the sex industry, in their role as independent business operators and, in the context of women trafficked for sexual exploitation. This is through threats to out and/or expose women by clients who have images, filming during bookings without consent, advertising/posting services and phone numbers online without consent and taking images of women and then using this as a form of power and control in situations of trafficking.

This form of harm is highly underreported and often not considered in the realm of violence or sexual harm perpetrated against women. There is a need for specific training and resources that go further than simply building the capacity of women to be able to keep themselves safe, and instead focus on the perpetrators of violence. To ensure that the risk of women being exposed to this form of harm is minimised, it is essential that this form of abuse is criminalised under the Crimes Act.

Recommendation:

- Ensure women who work in the sex industry are granted street-based protection through legislation.

¹⁷ Project Respect submission to the Senate Legal and Constitutional Affairs References Committee Inquiry into the ‘Phenomenon colloquially referred to as ‘revenge porn’, which involves sharing private images and recordings of a person without their consent, with the intention to cause that person harm’. Katherine McCormack. 14 January 2016.

- Inclusion of sexual assault colloquially named “stealthing” be included as an offence under Part 1. Division 1 – Offences Against the Person of the Crimes Act 1958.
- The inclusion of technology facilitated abuse and violence in the commercial sex industry setting needs to be included as an offence in Part 1. Division 1 – Offences Against the Person of the Crimes Act

Issue Paper D

Sexual Offences: Report to Charge

1. How well are Sexual Offence and Child Abuse Investigation Teams (SOCITs) and Multidisciplinary Centres (MDCs) working? How can they be improved?

The stigma and discrimination women with experience of the sex industry face is pervasive, and many women report to Project Respect that this is perpetuated within the services that have been established to support them, including state and federal policing agents. SOCIT and MDC’s could be improved by undertaking specific training to humanize women with experience of the sex industry and to also increase their understanding of sexual offences within the context of the sex industry setting.

Another option would be, given the size and scope of the sex industry, to develop a more collaborative approach with the Victoria Police Sex Industry Coordination Unit (SICU). Currently SICU is only a team of five, sit within an operational division of Victoria Police, experience regular changes in staff, and of the five staff, have 4 male officers, meaning many women are not always wanting to report to them. Greater collaboration between SOCIT and SICU could provide an appropriate response to the sexual harm experienced within the sex industry.

Further, sexual assault within a licensed sex industry venue needs to be responded to accordingly. SOCIT members have informed Project Respect that often brothels owners do not want Victoria Police onsite if an assault is reported, as it deters customers. This consideration would not be factored in to the operations of other businesses.

Recommendation:

- SOCIT and MDC’s undertake specific training to increase their understanding of sexual offences within the context of the sex industry setting.
- Foster greater collaboration between SOCIT and the Sex Industry Coordination Unit to address sexual harm and violence in the sex industry setting.
- Ensure policing units are staffed by both male and female officers to ensure women reporting sexual harm have the ability to choose who they feel more willing to speak to about their experiences.

2. What other issues need to be addressed to improve the experience of the police investigation process for adults who have been sexually harmed? How can they be addressed?

Willingness to engage with the police investigation process

It can be particularly difficult for women in the sex industry or women who have been trafficked that have been sexually harmed to be willing to engage with the police. This is largely because for many women engaged in the sex industry, the police are a body that they have come to be fearful of. It was noted in Project Respect's Submission to Review Decriminalisation of Sex Work that women in the sex industry have disclosed that threats to 'out' or expose them and their work to the police has been used as a form of coercive control. This fear is felt even more greatly by women who provide street-based sexual services, due to the criminalisation of this.

Further, women in the sex industry or women trafficked who have experienced sexual violence may be hesitant to engage with the police due to the fear of the discriminative treatment that they may face. As Project Respect noted in our 2015 submission to the Royal Commission into Family Violence:

"Many women in the sex industry experiencing violence face particular barriers to accessing support. They experience and fear being treated differently and more harshly, including by services intended to help women experiencing family violence. This includes family violence services, lawyers, courts, Child Protection, police and health practitioners. At times discrimination is significant, and the consequences are dangerous. However, even where women do not experience discrimination, fear stops many women from accessing help. This in turn means that family violence against women is underreported."

In the same submission, it was discussed that in the context of family violence, when a woman who worked in the sex industry had her child returned to her from a perpetrator of family violence, a police officer commented on the woman's work stating, *"well, I certainly hope now that she has her children back, that she won't be doing that anymore."* This fear of judgement has also been expressed by a member of the WAG. One woman described an experience of being pulled over by a police officer who did a full search of her and her car after she told him where she worked and she questioned whether the police officer would have done that if she did not say where she worked.

In this sense, women in the sex industry or women trafficked who have been sexually harmed may be discouraged from reporting this abuse to the police due to learned fears and perceived discrimination. In order to ensure that women who have been sexually harmed can engage with the police investigation process, it is important that they feel comfortable in doing so. This sense of comfort and safety may also be enhanced by providing women in the sex industry who have been sexually harmed to have the option to speak to a female police officer. Finally, the ability for women in the sex industry who have been harmed to feel comfortable in engaging in this process is also influenced by the attitudes and behaviours of the police, which should be understanding and non-discriminatory.

Ability to engage with the police investigation process

As mentioned earlier in this submission, previous Project Respect submissions have highlighted that cultural and linguistic diversity is a key driver of workplace sexual harassment within the sex industry and Project Respect estimates that approximately 80% of women working in licensed brothels in Melbourne are women from multicultural or non-English speaking backgrounds. In the 2017-2018 financial year, Project Respect outreach teams engaged with 248 women, 134 of whom were from multicultural backgrounds. These language barriers can isolate a woman who has been sexually harmed from seeking help or reporting acts of sexual harassment or violence. As a result, it is essential that multicultural services are in place within the police investigation process that allow women who have been sexually harmed who speak a different language to report this incident/s to the police. Further, some women fear engaging

with the authorities due to perceived impact on their migration status or visa, opting not to report, rather than risk coming to the attention of Federal agencies.

Additionally, it is necessary for women who work in sex industry settings to be able to have the ability to contact the police in the event of sexual harm. Members of the WAG indicated there needed to be a specific phone number which is readily displayed in brothels for women to be able to contact anonymously if they want to report non-consensual sex work, violence or exploitation. This could also be achieved by developing and implementing a direct phone line for sex workers to contact Victoria Police SOCIT or a specialised unit that is set up to respond to sexual assault in sex work/sex industry settings.

Appropriate police training and understanding

As previously mentioned in this submission, there is a lack of visibility and awareness relating to women in the sex industry who have been sexually harmed. Intersecting forms of violence frequently go unrecognised by the police, which leaves women at heightened risk of harm. It is important that police are appropriately trained to deal with women in the sex industry and women who have been trafficked and their specific experiences of sexual violence within these settings. In order to achieve this, it is necessary that police are able to identify these circumstances as well as the intersection between the sex industry, human trafficking and sexual violence.

Case Study: Intersection of Sex Industry, Human Trafficking and Family Violence

Chen* is a more mature woman from a South East Asian country. She is divorced and has two children who are living with a former partner in Asia. She met her new partner online and moved to Australia to be with him, at her partners request, and they got married. She agreed to move to Australia under the promise to be in an equal and respectful partnership however, soon after she arrived in Australia, she experienced serious forms of family violence and other forms of exploitation. Her partner was severely violent towards her. One of these assaults resulted in a neighbour contacting the local police, and the police removed Chen from the situation.

Chen was isolated, spoke little English and completely under her partner's control. She had to be available 24/7. This included work without being paid in the perpetrators business (labour exploitation), forced to do all the household work and other domestic duties (domestic servitude) and, provide sexual services to her partner multiple times a day against her consent (sexual exploitation). If she refused, he raped her, including strangulation. She was denied food and when her children visited they were also denied food and adequate living conditions.

The perpetrator allowed her to earn an income through the sex industry to provide food and other basic necessities for herself and her children. Her children were supposed to stay in Australia with her, but her partner would not allow them to travel back to Australia, then used threats against them to make Chen stay in Australia with him.

Chen reported the crimes perpetrated against her to the local police and her case was investigated as a family violence case. Her partner was sentenced to three months for family violence offences. In Chen's case, human trafficking indicators were not recognised by the local police. We believe that if human trafficking indicators had been taken into account, Chen's case would not solely have been treated as family violence, the sentence could have been much longer and Chen could have potentially had access to the Support for Trafficked People Program which would have provided the

wrap around support required to be safely removed from the situation of exploitation and violence. When the perpetrator was released from jail, Chen's safety was gravely at risk, and this was all compounded by her temporary visa status which restricted her access to other support services.

The above case study demonstrates the importance of appropriate police understanding of the way that the sex industry, human trafficking and sexual violence intersect, in order to improve the police investigation process.

Recommendations:

- Enabling a non-discriminatory and comfortable environment for women who have been sexually harmed to engage in the police investigation process, which could include the option to speak specifically to a female police officer.
- Ensuring the police investigation process has the services in place to engage with women from multicultural and non-English speaking backgrounds.
- Implementing a direct phone line that allows women in sex work/sex industry settings to report sexual assault.
- Ensure that police officers are appropriately trained on how to identify indicators of women involved in the sex industry and women trafficked and how this intersects with sexual violence.

Issue Paper G

Sexual Offences: Restorative and Alternative Justice Models

1. Do you support adopting a restorative justice model for sexual offences? Why or why not

Restorative justice provides a resolution without the criminal justice system. According to the 'Restorative Justice after sexual assault' article published by Community Legal Centres NSW, conventional legal pathways have continuously failed victims as sexual assault offences have the lowest conviction rates for any criminal offence.¹⁸

The United Nations has defined restorative justice in the criminal setting to be 'any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party'.¹⁹

Project Respect would be willing to support restorative and alternative justice models for women who have experienced sexual assault providing it was undertaken in a supportive manner that acknowledged the complexities of the sexual violence women experience within the sex industry.

¹⁸ Darren Smith, 'Restorative justice after sexual assault', Community Legal Centres NSW delivering access to Justice 2019 <https://www.clcnsw.org.au/restorative-justice-after-sexual-assault#endnotes>

¹⁹ United Nations 2002, *Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters* Article 1 (3).

The restorative justice model is founded upon three main aspects for addressing sexual harm, those being victim's voice, validation and providing a future plan for both individuals involved.²⁰

1. Victim's voice

Due to the barriers that many women in the sex industry face when reporting sexual harm, the restorative justice model permits women to directly speak of the assault and provide their own narrative of the incident. This is unmediated by police, court proceedings and external parties which can be daunting for women in the sex industry. Restorative justice can deliver women working in the sex industry who have experienced sexual assault with closure by allowing them to address the offender when often pursuing criminal charges would be too difficult, time consuming and costly.

2. Validation

Restorative justice permits the offender to listen to the women's narrative and ascertain insight and hopefully accountability for their actions, this in turn can contribute to a cultural shift in the behaviour of people who purchase sexual services to understand they have purchased a service, not a person.

3. Future Plan

Restorative justice model tries to find solutions to the sexual harm caused by providing a realistic plan to the immediate and future impacts of the sexual assault. This model can provide women in the sex industry who have been sexually exploited guidance, counselling and an opportunity to reverse the loss of power and control they may feel due to their sexual assault.²¹

Recommendations:

Project Respect would support adopting a restorative justice model for sexual offences as many women in the sex industry who have experienced sexual harm may feel discouraged in reporting any sexual assault to the police. This model may permit women in the sex industry to address the assault they experienced without the burden of going through a costly and time-consuming criminal justice proceeding.

²⁰ Darren Smith, 'Restorative justice after sexual assault', Community Legal Centres NSW delivering access to Justice 2019 <https://www.clcsw.org.au/restorative-justice-after-sexual-assault#endnotes>

²¹ Daly, K. (2015). What is restorative justice? Fresh answers to a vexed question. In *Victims & Offenders*, Vol. 11 (1), 1-21.