

**Submission  
No 148**

## **INQUIRY INTO THE REGULATION OF BROTHELS**

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**Date Received:** 19/08/2015



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

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The Committee Manager  
Select Committee on the Regulation of Brothels  
Parliament House  
Macquarie St  
Sydney NSW 2000

19th August 2015

Committee Manager,

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

Thank you for your letter dated the 24th of July 2015, inviting Vixen Collective to make a submission to this inquiry.

We appreciate the opportunity to contribute to the Inquiry into the Regulation of Brothels NSW, and attach our submission accordingly.

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

Sincerely,

[REDACTED]

Jane Green  
On behalf of Vixen Collective

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## ***Vixen Collective - Victoria's peer only sex worker organisation***

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

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

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

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

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

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

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

## ***Vixen Collective Objectives***

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

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



## ***Inquiry into the Regulation of Brothels NSW***

### **Appropriate local and state government regulatory and compliance functions for brothels**

At present in Victoria, the licensing system is administered by the state government, through Consumer Affairs Victoria (CAV), and with the registration/licensing of sex workers, managers and sex industry businesses by the Business Licensing Authority (BLA).

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

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

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

Within the licensing system in Victoria, Victorian police fulfill an enforcement role, which creates significant barriers for sex workers accessing police assistance, as covered in depth later in this submission.

Licensing as a regulatory model creates a burden for the state in terms of both administration and cost, whilst failing to achieve substantial levels of compliance. This has been borne out by the experience of licensing models implemented in Australia, both in Victoria and in Queensland<sup>2</sup>, where regulatory regimes have proven to be ineffective in terms of compliance<sup>3</sup> and cost recovery:

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

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

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

*" Presently, the costs of effective administration of the Act greatly exceed the revenue. Based on recent discussions with the BLA and CAV, it is expected that in 2013/14, the combined cost of the sex work service provider and brothel manager schemes was \$1,664,086 compared to \$899,560 in revenue. This equates to **54% cost recovery.**"<sup>4</sup> - emphasis added*

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

It has been acknowledged that there have been issues with the implementation of decriminalisation in New South Wales at a council level, with many councils attempting to limit sex industry businesses to specific zones and to ban private sex workers working from home altogether<sup>5</sup>.

Where these issues have arisen with the operation of decriminalisation in NSW they have stemmed primarily from:

- Local councils not assessing development applications from sex industry businesses fairly, or on the basis of amenity impacts
- Local councils banning private sex workers (who may still be classed as a 'brothel' by law<sup>6</sup>) working from home altogether
- Use of private detectives by local council and other agencies to attempt to collect evidence of non compliant premises via eliciting sex by fraud<sup>7</sup>
- Media use of inflammatory language and negative/stigmatising views towards sex work and the sex industry
- Persistent use of the term "illegal brothel" by media/government when under decriminalisation this is not relevant terminology, as brothels that have not applied for or yet met local planning guidelines are "non compliant"
- Objections to sex industry businesses upheld by local council when based on moral or 'NIMBY' (not in my back yard) grounds, rather than being based on planning or amenity impact, leading to lengthy and costly proceedings in the Land and Environment Court<sup>8</sup>.

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

<sup>5</sup> "The current approved Local Environmental Plans (LEPs) of 40 Sydney metropolitan councils were reviewed and analysed to discover the impact of local planning regulations on the permissibility of sex work. This research showed that the most common approach provided by these councils was to completely prohibit private Home Occupation (Sex Services) - HO(SS), while only allowing commercial Sex Services Premises SSP with consent in a small number of specified zones.", 'Info Kit on the NSW Inquiry into the Regulation of Brothels', Touching Base, 2015, pg.9.

<sup>6</sup> "Premises may constitute a brothel even though used by only one prostitute for the purposes of prostitution", Restricted Premises Act 1943 (formerly Disorderly Houses Act 1943), Part 1 - Definition of Brothel, As at 1 November 2013.

<sup>7</sup> '[Councils pay 'brothel buster' to have sex with prostitutes](#)', The Chronicle, Christopher Hooton, 13th March 2015.

<sup>8</sup> 'Info Kit on the NSW Inquiry into the Regulation of Brothels', Touching Base, 2015, pg.7.



It is the recommendation of Vixen Collective that the full decriminalisation of sex work, with local councils regulating the sex industry through the use of planning powers, fulfills appropriate regulatory/compliance functions.

It is necessary however that local councils comply with the intent of decriminalisation, being that sex industry businesses should be treated fairly in regard to development applications being assessed, with the practices of attempting to limit sex industry businesses to specific zones and of banning private sex workers working from home being ended.

### **The demarcation in local and state government roles and responsibilities**

As indicated above (in the section of this submission titled 'Appropriate local and state government regulatory and compliance functions for brothels'), under the licensing system in Victoria, the state government retains responsibility for regulation of the sex industry. This has proven to be an inefficient system with regard to the health, safety, human and labour rights of sex workers - but also to be extremely inefficient in terms of cost.

Under decriminalisation (as shown in NSW since 1995 and discussed at length in 3b 'Current regulation of brothels in NSW and other states') where it is the role of local council to regulate the sex industry, sex workers health, safety, human and labour rights are supported, but also costs to the state are greatly reduced.

It is the recommendation of Vixen Collective that the full decriminalisation of sex work is the optimal regulatory model for ensuring sex workers health, safety, human and labour rights, whilst giving regulatory and compliance powers to local council (including significant closure powers in regard to non compliant brothels<sup>9</sup>).

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<sup>9</sup> 'Info Kit on the NSW Inquiry into the Regulation of Brothels', Touching Base, 2015, pg.7.

## **Possible reform options that address the social, health and planning challenges associated with legal and illegal brothels**

### ***Local Council - Planning and Amenity Impact***

As outlined in the section of this submission titled 'Appropriate local and state government regulatory and compliance functions for brothels' since decriminalisation in NSW in 1995, local councils have not complied with legislation - including the Sex Services Premises Planning Guidelines<sup>10</sup> - continuing to attempt to exclude sex industry businesses and sex workers from local council areas.

*Proposed option for reform: sex workers and sex industry businesses should be treated fairly, as are other businesses, under the intent of the regulatory model of decriminalisation, and in line with the Sex Services Premises Planning Guidelines 2004.*

### ***Anti-discrimination Legislation on the Basis of Occupation***

In Australia there is no protection against discrimination on the basis of occupation at a federal level, and minimal protections in some states/territories.

Victoria is one of the states in Australia that offers some protection against this form of discrimination for sex workers<sup>11</sup>, but because this protection is based on "lawful sexual activity" rather than on the basis of occupation,<sup>12</sup> the protection is incomplete and excludes those workers outside the licensing system or subject to criminalisation (street based sex workers).

New South Wales does not have even the minimal protections that are available to sex workers under Victorian law (based on "lawful sexual activity"). An environment of prevailing stigma and discrimination, lack of protection for sex workers under the law, combined with barriers to sex workers accessing justice generally (either criminal or civil, as discussed elsewhere in this submission), all contributes to disempowerment for sex workers and compounds discrimination.

*Proposed option for reform: address lack of anti-discrimination protection on the basis of occupation for sex workers in NSW.*

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<sup>10</sup> 'Sex Services Premises - Planning Guidelines', NSW Department of Planning, December 2004.

<sup>11</sup> The other states being the Australian Capital Territory and Tasmania.

<sup>12</sup> The Law Handbook 2015, <http://www.lawhandbook.org.au/handbook/ch17s01s02.php>

### ***Health and Funding for Peer Sex Worker Organisations***

Over 25 years of medical research in Australia have shown that sex workers have lower rates of STI's and practice safer sex than the general population<sup>13</sup>. This is regardless of the regulatory environment that sex workers are working under - because sex worker peer education in Australia, funded through sex worker organisations and sex worker projects (as well as through informal sex worker networks) as part of the HIV response in Australia has been a success - educating and empowering sex worker community regarding their health and safety.

Licensing systems that have imposed mandatory testing (such as in Victoria and Queensland) have burdened clinics and the health system with the task of over-testing those that least require it (i.e. sex workers). Focusing inappropriately on sex workers draws government resources away from sections of the population that could benefit from targeted safer sex education.

All sexually active people should be educated to be tested as appropriate to their level of sexual activity and to engage in safer sex.

Continuing peer education and outreach services by peer sex worker organisations must be recognised for their important contribution to sex workers safer sex practices and ongoing low STI rates. There has been a move away from government funding to these types of peer education programs in recent years, yet peer education is (as described above) a key part of maintaining the health of sex workers in Australia.

*Proposed option for reform: maintain funding for peer sex worker organisations to continue peer education and outreach services in regard to sex workers sexual health and safer sex practices*

### **The current extent and nature of the brothel industry in New South Wales**

As reported in the LASH (Law and Sexual Health) report to the New South Wales government, estimates on the size of the sex industry in NSW arrive at a figure of approximately 3,174 employed in brothels (in any 12 month period) with other sectors of sex work (private home based, escort, street based) bringing the total up to approximately 4,500<sup>14</sup>.

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<sup>13</sup> ".. condom use for vaginal and anal sex exceeds 99%..", Improving the health of sex workers in NSW: maintaining success, Donovan et al, NSW Public Health Bulletin 2010, pg. 74.

<sup>14</sup> 'The Sex Industry in NSW: A Report to the NSW Ministry of Health', Donovan et al, 2012, pg. 16.

Estimates of the size of the sex industry in New South Wales both prior to and after decriminalisation have not varied<sup>15</sup>. In New Zealand where sex work was decriminalised in 2003 it is also the case that the size of the sex industry was not significantly affected by decriminalisation<sup>16</sup>.

## Current regulation of brothels in New South Wales and other states

Sex work in New South Wales is currently regulated under a decriminalised model of regulation, having been so since 1995.

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

- Decriminalisation is the removal of all criminal laws relating to the sex industry, allowing sex work to be regulated like any other business - this does not mean no regulation, but that the sex industry should be regulated like other businesses.
- Decriminalisation is recognised as the worlds' best practice model for sex industry regulation - by the United Nations<sup>17</sup>, the World Health Organisation<sup>18</sup>, Amnesty International<sup>19</sup>, Australia's HIV Strategy<sup>20</sup>, multiple medical studies<sup>21</sup>, and sex workers' representative organisations.
- Decriminalisation recognises sex work as work, helping to break down stigma against sex workers and reduce discrimination.

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<sup>15</sup> 'The Sex Industry in NSW: A Report to the NSW Ministry of Health', Donovan et al, 2012, pg. 16.

<sup>16</sup> *"..the enactment of the PRA has had little impact on the numbers of people working in the sex industry.."*, 'Report of the Prostitution Law Reform Committee on the Operation of the Prostitution Reform Act 2003', New Zealand Government, May 2008, pg. 41.

<sup>17</sup> The United Nations Population Fund, United Nations Development Fund and UNAIDS support the decriminalisation of sex work and note that legal empowerment of sex worker communities underpins effective HIV Responses.

<sup>18</sup> *"Countries should work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers."*, [Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations](#), World Health Organisation, July 2014, pg.91.

<sup>19</sup> [Global movement votes to adopt policy to protect human rights of sex workers](#), Amnesty International, 11 August 2015

<sup>20</sup> Australian Government Department of Health and Ageing, Sixth National HIV Strategy 2010-2013, Commonwealth of Australia, Canberra, 2010 at 6.4.

<sup>21</sup> For example: C Harcourt, J O'Connor, S Egger, C Fairly, H Wand, M Chen, L Marshall, J Kaldor, B Donovan, 'The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers', Australian and New Zealand Journal of Public Health, 2010, 34:5 pg 482.

- It has been shown that STI rates and safe sex outcomes for sex workers in New South Wales are maximised under decriminalisation<sup>22</sup>.
- Under decriminalisation there is less waste of police resources on enforcement, and sex workers are better able to access assistance when in need because of improved relations with police<sup>23</sup>.
- It has been shown that sex work as regulated under decriminalisation has little to no amenity impacts.<sup>24</sup>
- Access to justice is improved for sex workers under decriminalisation, including an improved ability to pursue criminal cases against those who perpetrate violent or sexual offences against sex workers, but also civil protections (such as restraining orders).
- Decriminalisation gives sex workers greater ease to access health services, which can be constrained under both licensing systems<sup>25</sup> and criminalised<sup>26</sup> settings.
- There is no evidence of organised crime within the sex industry under decriminalisation.<sup>27</sup>
- Greater industry transparency under decriminalisation aids anti-trafficking efforts<sup>28</sup>.
- Decriminalisation has been shown not to result in an increase in the numbers of workers participating in the sex industry<sup>29</sup>.

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

<sup>22</sup> National Centre in HIV Epidemiology and Clinical Research, *HIV/AIDS, Viral Hepatitis and Sexually Transmissible Infections in Australia Annual Surveillance Report 2010*, National Centre in HIV Epidemiology and Clinical Research, The University of New South Wales, Sydney, NSW; Australian Institute of Health and Welfare, Canberra, ACT. 2007.

<sup>23</sup> "The nature of sex workers' contact and interaction with police determines whether they feel confident making complaint to police regarding crimes of violence", Scarlet Alliance and the Australian Federation of AIDS Organisations, [Unjust and Counter Productive: The Failure of Governments to Protect Sex Workers From Discrimination](#) Sydney, 1999, pg 14.

<sup>24</sup> Prior and Crofts, 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use', *New Zealand Geographer*, v68, 2012, pg.130.

<sup>25</sup> The Sex Industry in NSW: A Report to the NSW Ministry of Health, 2012, pg.23.

<sup>26</sup> The [UNAIDS Guidance Note on HIV and Sex Work 2012](#) recognises that criminalisation poses substantial obstacles in accessing HIV prevention, treatment and support.

<sup>27</sup> As recognised by the Land and Environment Court in *Martyn v Hornsby Council*, cited in Nothing About Us Without Us, 'North Sydney Council Prohibits Home Occupation (Sex Services) in All Zones under the New Draft LEP', accessed at <http://nothing-about-us-without-us.com/tag/urban-realists/> on 30 October 2014.

<sup>28</sup> It has been shown that decriminalising sex work does not cause an increase in trafficking, New Zealand decriminalised sex work in 2003 and continues to be ranked in Tier 1 by the United States State Department Trafficking in Persons Report. United States Department of State. [Trafficking in Persons Report, \(2010\)](#).

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

## **Penalties and enforcement powers required to close illegal brothels**

As already indicated in this submission in the section titled 'Appropriate local and state government regulatory and compliance functions for brothels', under decriminalisation local councils have significant powers to manage sex work and sex industry businesses through planning powers, including closure of non compliant brothels.

It is not recommended that there be any extension to enforcement powers of local councils in closing non compliant brothels or penalties in relation to this.

## **Options for reform including a scheme of registration or licensing system for authorised brothels**

Licensing systems perpetuate stigma and discrimination against sex workers by failing to recognise sex work as work. Instead sex work and specifically sex workers are treated as separate and distinct from other workers - requiring monitoring and registration by government, regulation of our workplaces by police, and regulation of our bodies through mandatory testing.

Registration violates the human and civil rights of sex workers, creating a permanent record of sex worker status that can affect all of the areas outlined in the previous section as well as restriction of movement and identification of travel documents<sup>30</sup>.

In environments where the definition of brothel is made so restrictive, that even one sex worker working from home or their own premises may constitute a brothel (as in New South Wales), this may create an environment of "de facto registration" - where individual workers may be placed in the position of having to apply for development approval (as in NSW) - this is in comparison to outright registration in Victoria where no sex worker may work from their own home or premises without a permit or licence.

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

There is no benefit that accrues from registration for a sex worker - it does not make us safer nor assist us in any way in our work - yet the disincentives<sup>31</sup> (as listed below) are profound:

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<sup>30</sup> Christine Harcourt, Sandra Egger and Basil Donovan, 'Sex Work and the Law', *Sexual Health*, 2, 2005, pg.124.

<sup>31</sup> Refer Scarlet Alliance and the Australian Federation of AIDS Organisations, [Unjust and Counter Productive: The Failure of Governments to Protect Sex Workers From Discrimination](#) Sydney, 1999.

- Sex workers experience stigma and discrimination through 'outing', being exposed as a sex worker, this can impact on workers but also on families, partner/s and friends
- It can affect school age and/or older children if a parent or carer who is a sex worker is 'outed'
- Sex workers may experience interpersonal and/or interfamilial violence when 'outed'
- Being a sex worker may affect the outcome of child custody cases
- Sex worker status may affect access to housing and accommodation
- Sex worker status affects employment disputes & future employment opportunities
- Being out or being 'outed' as a sex worker leads to discrimination regarding health insurance
- The 'Leaking' and misuse of personal information on sex workers can lead to stalking, blackmail & extortion
- There are less opportunities for sex workers to utilise remedies to address discrimination
- Sex workers are discriminated against regarding goods and services<sup>32</sup> (including banking and online commerce)
- Sex workers have been barred entry to clubs or hotels
- There is discrimination in education against sex workers (including the exclusion of sex workers from University Courses on 'morals clauses')
- Sex workers are discriminated against regularly in medical settings (for example refusal and/or exclusion from treatment 'on conscience')
- Sex workers have been discriminated against in membership of trade unions
- Sex workers experience the implication of 'criminality' that is implied by registration under licensing regimes
- Sex workers have less ability to access police/justice under criminalised and licensing systems.
- There is reduced access to health/outreach services for sex workers under criminalisation/licensing systems for regulating sex work
- Sex workers experience increased stigma and discrimination in media

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<sup>32</sup> For example advertising: "You ring up and ask to place an ad for a fridge and it's \$40. Then you ask for a sex ad and it's 10 times that much", sex worker Ivy McIntosh, quoted in '[Scarlet Alliance protest on Whores Day](#)', News.com.au, 2nd June 2009

- Police attitudes to sex workers, including corruption and harassment from criminalisation, or entrenched stigma/discrimination from prior criminalisation - affect sex workers ability to access police and their treatment when sex workers do.
- Sex workers are subject to stalking and harassment from anti sex work groups and their members, including outing to family and in social media
- Sex workers may also experience multiple intersecting discrimination when also part of one or more of the following communities; Aboriginal and Torres Strait Islander sex workers, street based sex workers, sex workers living with HIV, migrant and culturally and linguistically diverse sex workers, trans\* sex workers, sex workers who use drugs.

Registration also creates an administrative burden for sex workers; in having to know the details of licensing requirements, keep up to date with any changes to legislation/policy, go through initial applications processes, file changes/updates, maintain records and file annual returns.

These processes continue to place sex workers at risk in an environment where their work is stigmatised and discrimination is present in many forms, by not only by recording sex workers' personal and business information, but by potentially making it accessible to the public<sup>33</sup>.

Issues of data security, data retention, and use of and access to sex workers information remain key concerns where data on sex workers is held by government. There have been breaches in data security of sex worker registries in Australia (for example, filming of the contents of the ACT register by a television crew) and inappropriate usage of sex worker information from sex worker registers (for example, 'outing' of sex workers from the register held under the containment policy in Western Australia), indicating that where this information is collected it creates greater risk for the safety of sex workers and increases opportunities for discrimination against us.

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

Sex workers in brothels in Victoria - working under a licensing model for regulating sex work - report having little to no ability to negotiate working conditions, including the ability to effectively exercise "ROR".

"ROR", colloquially known as "right of refusal" is essentially rendered ineffective because of the disproportionate power that the licensing system gives to brothels. When as sex workers we have few workplace options open to choose from, our ability to organise effectively, have bargaining

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<sup>33</sup> Unless a sex worker applies for and receives an ABN suppression order, this places a sex worker in the position of having their ABN information publically accessible to be looked up on the ABN register.



power regarding workplace conditions, and to exercise control over our work is dramatically reduced.

In a licensing environment sex workers also indicate unwillingness to make reports against brothel owners/operators and managers due to fear of repercussions<sup>34</sup>. In a decriminalised setting, with a greater range of working options available, the disproportionate power of brothels is reduced and this presents less of an issue for workers.

It has been shown that rates of violence and sexual assault against sex workers are linked to the degree of control a sex worker has over their workplace<sup>35</sup>. Full decriminalisation, where sex workers have a range of choices about working environments, moves sex workers closer to parity with other workers in terms of workplace rights, but most importantly provides us with greater control over our working spaces - which directly affects our safety.

Under licensing systems access to police for sex workers is significantly reduced due to the oppositional roles sex workers and police are placed in<sup>36</sup>. This is particularly acute for sex workers who work outside the licensing system, or whose work may remain criminalised (for example street based sex workers in Victoria).

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

- i. Reduced access to police (oppositional role of police, as mentioned above)
- ii. Reduced ability to access justice through the courts
  - Cases not taken up due to a perception that it is more difficult to gain a conviction against someone that assaults a sex worker
  - Name suppression is often denied to sex workers who are victims of crime, including crimes of violence and rape
  - Fear of 'outing' discourages sex workers from pursuing charges through the courts
  - Stigma of testifying as a sex worker adds an additional burden for sex workers pursuing justice

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<sup>34</sup> Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

<sup>35</sup> [Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003](#), Ministry of Justice, New Zealand, May 2008, pg.56.

<sup>36</sup> "The nature of sex workers' contact and interaction with police determines whether they feel confident making complaint to police regarding crimes of violence. Better relationships with the police were apparent...where the police had no role in regulating the sex industry.", Scarlet Alliance and the Australian Federation of AIDS Organisations, [Unjust and Counter Productive: The Failure of Governments to Protect Sex Workers From Discrimination](#) Sydney, 1999, pg 14.

- Media coverage of trials is often stigmatising and distressing for the victim and sex worker community
- iii. Reduced justice received
- History of low sentences for crimes against sex workers<sup>37</sup>
  - In some jurisdictions there is existing case law providing for reduced sentences for cases involving sex workers as victims  
eg. Victorian case law on cases involving rape of sex workers (Harris/Harkonen)<sup>38</sup>

All fees and penalties that relate to licensing systems are an outlay by government for a system that can never be cost equalised<sup>39</sup> and must be supplemented by taxpayers, whose money could be better spent by funding sex worker's representative organisations to do work that contributes to sex workers human rights and occupational health and safety, rather than continuing to fund a system that actively harms sex workers.

The threat of penalties for those working outside a licensing system and those working under remaining criminalisation (for example street based sex workers in Victoria) creates additional barriers to accessing assistance from police over and above what sex workers already face. Although Victorian police have stated that it is "unlikely"<sup>40</sup> that a sex worker would be charged for a breach of the licensing system when reporting a crime of violence or rape - this remains a significant disincentive for sex workers as it is discretionary (often up to the individual officer) as to whether or not to place charges.

It is specifically the most marginalised among our community that are most affected by penalties under licensing. In Victoria (under the licensing system) street based sex workers are subject to penalties due to their work, may struggle to pay penalties and then work to do so, potentially

<sup>37</sup> "Bayley was first jailed in 1991 for sexual assault and served just 22 months of a five-year sentence. In September 2000 he was jailed for a minimum of eight years for the rape of five prostitutes over a six-month period..", ['Jill Meagher's husband Tom Meagher says justice system failed her and Adrian Bayley's sentence is a disgrace'](#), ABC News, 20th June 2013.

<sup>38</sup> "Two controversial cases provide a non-binding precedent that allow judges to consider the victim's sexual experience when passing sentence on an offender – but only in circumstances when the "victim is a prostitute"... This sentencing advice is troubling on three fronts. First, it allows judges to interpret that sex workers experience trauma and victimisation differently to "chaste" women, and reinforces the whore stigma. Second, it can be interpreted as placing an onus on sex worker victims to prove their trauma. Third, it shifts focus away from the offender and their actions and towards the victim...", ['Victorian rape law needs reform to protect sex workers'](#), The Conversation, 30th March 2015.

<sup>39</sup> "..Cost recovery continues to be inefficient. The value placed on licences and other items does not equal the cost of resources required to regulate the industry (CAV and BLA costs)..", Sex Work (Fees) Regulations 2014, Consumer Affairs Victoria, April 2014, page 27.

<sup>40</sup> ['St Kilda sex worker calls out on Red Umbrella Day for more effort to find Tracey Connelly's killer'](#), Bayside Leader, December 18th 2013

attracting further penalties, thereby risking a cycle of continuously being penalised for working and then having to work more to pay the costs of penalties.

The licensing system forces sex workers into contact with the courts, contributes to records with the state that may affect future work and life options (employment, housing, custody, etc) and serves no purpose except to further stigmatise a marginalised community.

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

### **The protection of sex workers, including issues around organised crime and sex trafficking**

Trafficking has been shown not to be a feature of the Australian sex industry, according to Australian government figures, yet policy and enforcement of policy regarding trafficking and sexual slavery unfairly stigmatises sex workers - specifically migrant sex workers.

*"Chris Ellison, then Minister of Justice, said, 'no significant' sex slavery problem existed in Australia.. Between January 2004 and October 2011, the Australian Federal Police Human Trafficking Team undertook over 305 investigations into allegations of trafficking-related offences. These assessments led to 39 matters being referred to the Commonwealth Director of Public Prosecutions for matters related to sexual servitude and other labour exploitation. Of those, 14 have resulted in convictions.."*<sup>41</sup>

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

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

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<sup>41</sup> ['Scarlet Alliance, Australian Sex Workers Association, Recommendations to the UN General Assembly High Level Dialogue on Migration and Development'](#), 15th July 2013, pg.3-4.

*.. although the scale of the problem is yet to be determined, recent AIC research and a small increase in detected labour trafficking cases has confirmed that labour trafficking is an issue across several Australian industries and warrants further attention."<sup>42</sup> - emphasis added*

Both policy in regard to trafficking and sexual slavery and the enforcement of these policies contribute to:

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

At present Australian anti-trafficking policy is focused on a punitive approach. Sex workers representative organisations have long been lobbying for a prevention approach to trafficking<sup>43</sup>, this would entail:

- Legitimate migration pathways for sex workers to Australia
- Immigration information being available in the language of country of origin
- Better funding to sex worker organisations to enable CALD (culturally and linguistically diverse) staff to inform sex workers of their rights

Most importantly migrant sex workers have agency and are able to speak on their own behalf about their own lives - it is imperative that migrant sex workers are not excluded from the formulation of policy that will impact on their lives and work.

Vixen Collective, like other peer sex worker organisations in Australia, through our work maintain ongoing contact with sex worker community, including conducting regular consultations on a variety of subjects.

It has not been reported either in consultation with Victorian sex worker community, or anecdotally that organised crime is either a feature, or even occurring sporadically within the sex industry in Victoria. It is reported by other peer sex worker organisations across Australia that this is also the case in other states/territories.

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<sup>42</sup> [People Trafficking in Australia](#), Trends & issues in crime and criminal justice no.441, Australian Institute of Criminology, June 2012

<sup>43</sup> Scarlet Alliance, of which Vixen Collective is a member, is a leader in this approach with the [Scarlet Alliance Migration Project](#).

It is our belief that the sex industry has been viewed in this way due to a number of factors:

- The historical context of criminalisation of the sex industry.
- The enduring perception of the sex industry/sex workers as criminals due to this history.
- The entrenched discriminatory attitude of police, a significant number of whom are still in place from this era.
- Stigmatizing media attitudes towards the sex industry/sex workers.
- The activities of anti sex work groups/religious groups that lobby for abolition of sex work.
- Funding for non peer NGO's and service organisations that relate to sex work are often predicated on portraying sex workers as victims and/or in need of exiting a 'dangerous' industry, these policies contribute to the stigmatization of sex work and sex workers.
- Sex workers and sex worker peer organisations are often excluded from policy discussions or not considered to be key stakeholders.

The level of focus on organised crime and trafficking in the sex industry (this focus being almost exclusive, as if these do not occur in other industries when this is not the case<sup>44</sup>), the policies this produces and the enforcement of these policies all contribute to furthering stigma and discrimination against sex workers.

### **Options to maintain the high level of public health outcomes**

Concerns around public health and sex work are often predicated on the idea that sex work is inherently dangerous (specifically that any risks related to sex work derive from contact with clients) and also unclean. This is based on stigma and stereotyping of sex workers as 'vectors of disease' and of our work as risky or violent. Modern media and the arts often propagate these ideas which have traction in the public consciousness but bear little relation to the reality of our lives.

These stereotypes overlook the fact that it can be the laws under which we work (for example licensing in Victoria) that often place us most at risk - by denying us control over our working environments, access to labour rights instruments (Worksafe, Workplace Ombudsman etc), ability to choose and move freely between workplaces, and adequately funded peer sex worker services.

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<sup>44</sup> "...recent research has indicated that labour trafficking exists in a broader context of exploitation of migrant workers, particularly those in low-skilled professions. In 2010, those perceived to be at greatest risk of exploitation were vulnerable migrant workers. These were most commonly encountered on 457 visas relating to semi-skilled occupations, 109 and among migrants working in the agricultural sector or as domestic workers, international students and those working in the maritime/seafaring sector.", 'Organised Crime in Australia 2013', Australian Crime Commission, July 2013, pg.62.

Laws that apply criminal sanctions or penalties to a sex act that would be otherwise legal, except that the sex involved is paid, are arbitrary and contrary to the findings of substantial medical research.

Sex workers undertake education in sexual health and safer sex both as peer educators within their own community and with clients. This is reflected not only in low STI and HIV rates for sex workers in Australia, but in high uptake of safer sex practices<sup>45</sup>.

Importantly sex workers should have the same rights to bodily autonomy and the same ability to exercise choice regarding their health and healthcare as other members of the public do.

Full decriminalisation is the regulatory model that best supports sex workers health, safety and labour rights and has been shown to do so in multiple medical studies, as well as being recognised by medical journal The Lancet:

*"Decriminalise sex work. Decriminalisation can improve the risk environment.. End impunity for crimes and abuses committed against sex workers. Advance evidence-based policies and practices in partnership with SW-led organisations. End discriminatory laws, policies and practices against female, male and transgender sex workers. .. Include civil society, incl SW-led organisations, in national policy planning. Recognise sex work as work, and develop occupational health and safety standards, mechanisms to redress violence against sex workers and other violations against labour and human rights."*<sup>46</sup>

## **Residential amenity and the location of sex services premises**

Under a licensing systems it is often the case that private sex workers are not easily able to work from their own premises. For example in Victoria, the requirements for a sex work service provider to obtain registration as an exempt brothel (the classification for an individual sex worker working from their own premises) are so onerous and the disincentives so great that many sex workers refer to it as a "technical impossibility"<sup>47</sup>. However, this places private sex workers in the position of always going to other locations to do their work, that they have no familiarity with or control over.

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<sup>45</sup> ".. condom use for vaginal and anal sex exceeds 99%..", Improving the health of sex workers in NSW: maintaining success, Donovan et al, NSW Public Health Bulletin 2010, pg. 74

<sup>46</sup> Panel 4: Calls for action for stakeholders in the HIV response for sex workers, An action agenda for HIV and sex workers, The Lancet, 22nd July 2014, pg.10.

<sup>47</sup> Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

Requirements for sex industry businesses to be located in industrial areas (as is often the case under licensing systems) means that there is a safety risk for sex workers having to work in, and travel to and from these areas:

- Limited options for public transport (particularly on weekends/holidays)
- Inadequate lighting at night
- Lack of amenities, including suitable healthy food outlets
- Industrial areas may be deserted at night and/or even during the day, meaning that sex workers are highly identifiable and may be targets of abuse.

Amenity impacts from sex workers and sex industry businesses have been shown to be very low<sup>48</sup>, as the business model of the sex industry is to be as low impact as possible:

- Sex workers do not wish to attract attention due to the stigma associated with our work and so go to great efforts not to be identified as workers/attract attention of residents/other businesses
- Clients also do not wish to be identified as patrons of sex workers or sex industry businesses due to the stigma attached, so generally attend sex workers and/or sex industry businesses with a reasonable degree of discretion
- Brothels have great difficulty gaining either local council approvals (in New South Wales) or licenses (in Victoria) and therefore do not wish to lose or endanger these
- Even non compliant entities (regardless of jurisdiction) make efforts to not create an amenity impact on the local area, so as not to come to the attention of regulators

Depictions of sex workers and sex industry businesses as causing significant amenity impacts on their environment are not evidence based and speak more to the stigma surrounding our work.

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<sup>48</sup> "There is little evidence that such activity causes disturbance, other than moral indignation, to the community..", [Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003](#), Ministry of Justice, New Zealand, May 2008, pg.143.

## **Any legislative changes that may be required**

As highlighted in the section of this submission titled 'Possible reform options that address the social, health and planning challenges associated with legal and illegal brothels' at present sex workers do not have either federal or state (in NSW) protection against discrimination on the basis of occupation.

It is recommended that this be addressed as a matter of urgency to prevent discrimination against sex workers in New South Wales, as this is an ongoing and serious issue for sex workers and sex worker community, which occurs not just in NSW but throughout Australia.

## **Any other related matters**

Legislation that constrains sex workers' ability to work is often premised on the idea that sex workers require protection due to (what is claimed to be) the 'inherent violence' in our work. This idea is problematic in a number of ways:

- a. Like all victim blaming this places the fault for any violence that sex workers may face in our work onto workers rather than the perpetrators of that violence.
- b. Arguments of this nature focus almost exclusively on physical and/or sexual violence and therefore exclude systemic violence and oppression.
- c. Because of tendencies to depict sex work as a dangerous or 'inherently violent' type of work there is a failure to address the causes (individual, systemic) or solutions (decriminalisation, anti discrimination protections, working to reduce stigma etc) to any violence that sex workers may face.
- d. It ignores that there are professions with comparable levels of violence (but without comparable levels of stigma) who are responded to very differently on the subject of workplace violence:



*"Workplace violence against women is a common experience. The Department for Victorian Communities (2005) found that 62.1% of women had experienced some form of workplace violence in the last five years. This included being sworn at, bullying, physical attacks, sexual harassment, stalking and rape. Chappell and Di Martino (2000) identified several 'at risk' workplace scenarios:*

- *working alone (in small business, from home, community care and domestic workers);*
- *providing care, advice or training (nurses and other health workers, social and community workers);*
- *handling money or valuables; and*
- *working with mentally disturbed, drunk or potentially violent people (mental health, hospitality).."<sup>49</sup>*

It should of course be noted that sex workers are not exclusively women, as indeed neither are the other professions quoted in the Department for Victorian Communities study (domestic workers, nursing, community work, mental health workers, hospitality).

What is key however is that when addressing violence in sex work government has historically responded by limiting sex workers rights to work, required sex workers to register their details with the government and heavily policed sex workers themselves (policing the victim), in contrast to addressing violence towards other workers/workplaces where they have focused on policing perpetrators.

Legislation is also often predicated on the idea that sex work inherently involves criminal elements, for example organised crime or trafficking. As outlined in the part of this submission titled 'The protection of sex workers, including issues around organised crime and sex trafficking' this has been shown not to be the case in both government studies and through sex worker organisations peer networks.

Overall Australia has fallen behind in terms of its approach to regulating sex work. As previously mentioned the United Nations<sup>50</sup>, the World Health Organisation<sup>51</sup>, Amnesty International<sup>52</sup>,

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<sup>49</sup> Sex Workers and Sexual Assault in Australia, Australian Institute of Family Studies, No.8, Quadara, A., 2008, pg.11-12.

<sup>50</sup> The United Nations Population Fund, United Nations Development Fund and UNAIDS support the decriminalisation of sex work and note that legal empowerment of sex worker communities underpins effective HIV Responses.

<sup>51</sup> "Countries should work toward decriminalization of sex work and elimination of the unjust application of non-criminal laws and regulations against sex workers.", [Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations](#), World Health Organisation, July 2014, pg.91.

<sup>52</sup> [Global movement votes to adopt policy to protect human rights of sex workers](#), Amnesty International, 11 August 2015

Australia's HIV Strategy<sup>53</sup>, multiple medical studies<sup>54</sup>, the Scarlet Alliance (Australian Sex Workers Association)<sup>55</sup> and countless other sex worker organisations all call for the full decriminalisation of sex work.

Both New South Wales and New Zealand (where sex work was decriminalised in 2003) have produced ample evidence of the positive health and safety outcomes of decriminalisation for sex workers. Also as indicated at AIDS 2014 held in Melbourne last July there is commitment from other members of government and policy makers from across the Asia-Pacific to move towards decriminalisation<sup>56</sup>.

It is imperative that all states and territories in Australia eventually move towards decriminalisation - in consultation and partnership with sex workers - so as not to be left behind in either regional or global policy on sex work.



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<sup>53</sup> Australian Government Department of Health and Ageing, Sixth National HIV Strategy 2010-2013, Commonwealth of Australia, Canberra, 2010 at 6.4.

<sup>54</sup> For example: C Harcourt, J O'Connor, S Egger, C Fairly, H Wand, M Chen, L Marshall, J Kaldor, B Donovan, 'The Decriminalisation of Prostitution is Associated with Better Coverage of Health Promotion Programs for Sex Workers', Australian and New Zealand Journal of Public Health, 2010, 34:5 pg 482.

<sup>55</sup> "Decriminalisation is the legal framework that sex workers and sex worker civil society or community-based organisations recommend as the best practice model of sex work legislation", [Sex Work Legislation Stands In The Way Of Australia's Commitments](#), Fawkes, J., HIV Australia 12:2, July 2014.

<sup>56</sup> "Papua New Guinea Health Minister Michael Malabag committed to introducing legislation to decriminalise sex work as a key reform to tackling HIV/AIDS in his nation. Other Asia-Pacific MPs from the Asian Forum of Parliamentarians on Population and Development (AFPPD) also committed to dialogue with drug users and sex workers.." [MPs commit to rights based reform to tackle AIDS](#), AFPPD, July 24th 2014.

## **Vixen Recommendations**

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

Accordingly and on the basis of this submission, Vixen Collective makes the following recommendations:

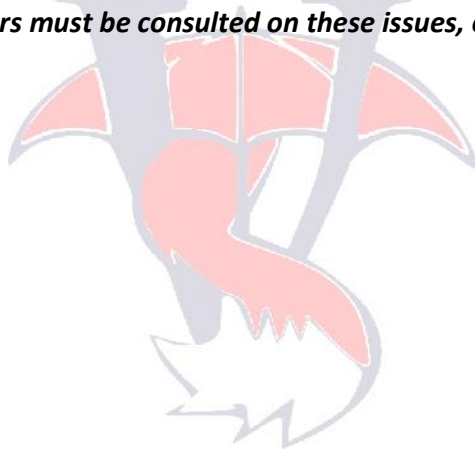
- 1) *Decriminalisation is the accepted best practice model for sex industry regulation, that benefits sex workers health, safety and rights, as well as public health.*  
***The New South Wales government must place the rights, health and safety of sex workers first when making decisions regarding sex work, and in doing so to retain decriminalisation as the regulatory model for sex work in New South Wales.***
- 2) *It must be recognised that all licensing systems harm sex workers and critically compromise sex workers health, safety, human and labour rights.*  
***Licensing systems where implemented in Australia have been shown to harm sex workers and compromise sex workers health, safety, human and labour rights - we therefore call on the New South Wales government to reject any licensing system as a potential regulatory model for sex work in New South Wales.***
- 3) *Local councils in New South Wales must treat sex workers and sex industry businesses fairly under decriminalisation, not ban sex workers or sex industry businesses, or refuse development applications on the basis of stigma.*  
***We call on the New South Wales government to regulate sex work fairly, as is done for other businesses, and to do so in line with the Sex Services Premises Planning Guidelines 2004.***
- 4) *Stigma and discrimination affect New South Wales sex workers on an ongoing basis, for which there is no recourse, as anti-discrimination protections on the basis of occupation do not exist either at a federal level, or at a state level in New South Wales.*  
***There must be coverage under New South Wales anti-discrimination law against discrimination on the basis of occupation for sex workers.***

5) *Sex workers' representative organisations undertake key work in health promotion, peer education, outreach, community organising, and ongoing engagement with sex workers in Australia. It is critical that funding for these efforts be maintained.*

***We call on the New South Wales government to maintain funding for peer sex worker organisations, most importantly for health promotion, but also for the many other important roles our peer sex worker organisations play in sex workers lives and work.***

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

***We call on the New South Wales government to recognise sex workers as the key stakeholders in both legislative processes and policies that affect us and our work - that sex workers must be consulted on these issues, our voices prioritised.***



## ***Glossary of Terms***

### **Non Peer:**

A non sex worker. When used to describe an organisation this means that although there may be a possibility of some sex worker staff (as there is the possibility of undeclared sex workers at any organisation) it is not a sex worker only organisation.

### **Peer Only:**

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

### **Private Worker/s:**

In Victoria - this is the sex worker term for someone who under the licensing law in Victoria is called a "small owner-operator sex work service provider", i.e. an individual sex worker working for themselves rather than in a brothel.

In New South Wales - this is the sex worker term for someone who may be referred to by local council as a private home occupation sex services HO(SS), but may also simply be known as a "sex worker", "private worker" or "escort".

### **Sex Workers' Representative Organisations:**

In each state and territory of Australia sex workers participate in their representative organisations, for peer support, health promotion and to lobby for law reform. These are peer only organisations (refer "Peer Only").

### **Whorephobia:**

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