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Sex Work Review  
Victorian Government  
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Respect Inc is the state-wide sex worker organisation in Queensland. Our organisation provides a comprehensive health promotion and peer education program for sex workers. Respect Inc has offices and sex worker drop-in spaces in Cairns, Brisbane, Townsville and the Gold Coast and provides regional outreach in other locations.

Thank you for considering our submission to this process. Respect Inc supports the full decriminalisation of sex work. As a state-wide sex worker organisation in Queensland, we engage with many workers who tour to Queensland from Victoria, or who live in Queensland and tour to Victoria. Respect Inc staff hear often of the barriers that criminalisation and licensing laws create in Victoria.

Queensland is the other jurisdiction with a licensing framework. Sex workers in Queensland experience many of the same negative impacts as sex workers in Victoria. Although there are many differences in the laws of each jurisdiction, the overall impact is the same. Many sex workers and sex industry business models are locked out of the legal sector and therefore susceptible to criminalisation, fines and arrest - effectively criminalised. Licensing, by any measure, has failed as an effective, efficient or safe model of regulation. Decriminalisation on the other hand has demonstrated positive workplace health and safety outcomes for sex workers. A fully decriminalised sex industry would significantly improve compliance, be cost effective and provide significant improvements for sex workers.

We are aware that you will receive submissions from Vixen Collective and Scarlet Alliance, Australian Sex Workers Association and we endorse those submissions. Instead of providing detailed evidence on the areas likely to be covered by those submissions we have instead outlined the key problems with Victoria's sex work laws that overlap with our experience in Queensland. Our submission also makes recommendations for this review.

We look forward to the opportunity to discuss these matters with you.

Regards,

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*Chairperson, Treasurer*  
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## **Executive Summary**

The Victorian legislation is intrinsically flawed in that its purpose to 'control' does not include any recognition of sex work as work and makes no attempt to support the legal, human or workplace health and safety rights of sex workers.

Licensing systems have failed in Queensland and Victoria. Like the Queensland model, the Victorian licensing framework creates a two-tiered industry locking the majority of the industry outside of the legal sector, with limited access to rights and effectively criminalised.

Complete sectors of the sex industry in Queensland and Victoria including massage parlours, sex workers working in pairs and co-operatives, are deemed illegal by a model of regulation that seeks to apply a 'one size fits all' approach which has failed in its intended purpose.

Registration of individual sex workers has been repealed in all other jurisdictions as it creates significant barriers to compliance and ignores the privacy and safety concerns of sex workers. The registration of sex workers in Victoria on a permanent register with the Business Licensing Authority and provision of a Sex Work Act (SWA) number, stands out as a draconian 'control' approach that should urgently be repealed.

The enforcement role of police over sex workers and the sex industry in Victoria is dangerous and a waste of resources, resulting in fines, arrest, discretionary use of powers, barriers to reporting of crime by sex workers and other negative impacts for sex workers.

Criminalisation of street based sex work in Victoria is in opposition to the insurmountable evidence that recognises the harm caused by criminalisation.

Intrusive and excessive over-regulation (e.g. advertising & registration) significantly restrict basic business practices for individual sex workers in Victoria.

Rather than minor adjustments to the legislation or regulations in Victoria the inquiry should recommend the full decriminalisation of sex work. Essential to this outcome is the repeal of the Sex Work Act 1994 (formerly known as the "Prostitution Control Act 1994"), Sex Work Regulations 2016 (which saw the Sex Work Regulations 2006 revoked), and repeal of the sex worker related sections of the Public Health and Wellbeing Act 2008.

Decriminalisation in Victoria must not include registration or licensing of sex workers or sex industry businesses, or exceptional police or regulatory powers. Police should be removed from any role in relation to the sex industry other than the application of other laws that are applied to all industries.

Stigma and discrimination against sex workers means that laws and regulations are not applied fairly and consideration is needed to address this uneven playing field. An example is anti-discrimination protection necessary to send a clear message against discrimination and provide an avenue for redress. This also the case when existing regulatory systems that would create significant barriers to sex worker or sex industry business compliance because of privacy or other concerns. For example private sex workers should be excluded from the requirement to obtain local council permits.

A full decriminalisation model will be low cost, maximise compliance, deliver improved workplace health and safety outcomes for sex workers and provide protect against stigma and discrimination.

## **1) Problem: Purpose of legislation - Policy driven by stigma**

### **Solution: Evidence based policy**

The stated purpose of the Sex Work Act 1994 'is to seek to control sex work in Victoria'. The purpose fails to recognise sex work as work and makes no attempt to support the legal, human or workplace health and safety rights of sex workers. Recommendation from this review should provide guidance on the purpose of new legislation including that it supports the legal, human or workplace health and safety rights of sex workers.

Flowing on from the stated purpose of current legislation in Victoria, the frameworks, background thinking, and enforcement of sex work laws in Victoria are very clearly driven by a purpose not in line with current understandings of sex work, and are instead driven by stigma against sex workers. Notions of 'vectors of disease,' 'protecting the public' and, worse, 'sex workers as victims', and the need for extraneous layers of laws and regulations in order to 'control sex work' are neither supported by research or sound public policy. At the time the laws were put together, it is obvious that allaying community fear of sex workers, disease, sexual indiscretion and non-monogamy were in the minds of law makers with little regard for the legal, human or workplace health and safety rights of sex workers.

### **a) Mandatory Testing**

A prime example of this is mandatory testing. Victoria's mandatory testing laws and policies are in opposition to best practice models of voluntary testing and self regulation of sexual health amongst sex workers.<sup>1</sup> Research in Victoria demonstrates the policy wastes limited health resources<sup>2</sup> redirecting services from individuals who are symptomatic or high risk.<sup>3</sup> Current epidemiology demonstrates sex workers have levels of sexually transmissible infections comparable to or lower than the general population throughout Australia. This demonstrates a high level of uptake of condom use and testing, and that voluntary testing delivers equivalent or better outcomes for sex workers sexual health.

Changes to Victorian legislation failed to repeal this flawed policy even though health professionals, policy experts, sex workers and researchers were united in a recommendation for repeal. Instead changes to the Sex Work Act in 1994 inserted the ability for the state's Health Minister to change the frequency of testing. Within this review mandatory testing of sex workers in Victoria should be repealed.

Jeffreys, Fawkes and Stardust (2012) explain:

Australia is an apt landscape upon which to measure the success of mandatory testing of HIV and sexually transmissible infections (STIs) among sex workers. Mandatory testing is implemented in some Australian jurisdictions and not others, allowing for a comprehensive

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<sup>1</sup> Commonwealth Department of Health and Ageing, "National HIV/AIDS Strategy—Revitalising Australia's response 2005-2008," Australian Commonwealth Government, Canberra, 2005.

[http://www.health.gov.au/internet/main/publishing.nsf/content/3F25543027A178E9CA25710F0017AD3A/\\$File/hi\\_v aids\\_strategy.pdf](http://www.health.gov.au/internet/main/publishing.nsf/content/3F25543027A178E9CA25710F0017AD3A/$File/hi_v aids_strategy.pdf)

<sup>2</sup> D. Wilson, K. Heymer, J. Anderson, J. O'Connor, C. Harcourt and B. Donovan, "Sex Workers Can Be Screened Too Often: A Cost-Effective Analysis in Victoria, Australia," *Sexually Transmitted Infections*, 2009, p. 117.

<sup>3</sup> A. Samaranayake, M. Chen, J. Hocking, C. Bradshaw, R. Cumming and C. Fairley, "Legislation Requiring Monthly Testing of Sex Workers with Low Rates of Sexually Transmitted Infections Restricts Access to Services for Higher Risk Individual," *Sexually Transmitted Infections*, Vol. 85, No. 7, 2009, pp. 540-542.

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comparison of the outcomes. It is apparent that mandatory testing of HIV and STIs among sex workers in Australia has proven to be a barrier to otherwise successful HIV and STI peer education, prevention and free and anonymous testing and treatment. The outcomes of mandatory testing are counterproductive to reducing HIV and STI rates, do not reach the intended target group, are costly and inefficient, and mandatory testing has proven to be a very difficult policy to repeal once in place....

Mandatory testing fails as evidence-based policy. Mandatory testing is based on false perceptions about sex workers, and is divorced from the ways in which sex workers operate on a daily basis. Epidemiological evidence shows that mandatory testing is unnecessary. Sex workers already engage in safer sex practices, act as safer sex educators of our clients, peers and communities, and are experts at identifying, assessing and managing different degrees of risk. Mandatory testing is based on a narrow view of what constitutes sex work, which assumes that all forms of sex work involve penetrative intercourse. Sex workers provide a variety of services, and these services involve different degrees of risk (and some, no risk at all).

Much time has passed since the mandatory testing regime was legislated in Victoria. The fact that this is its first substantial review is testament to how difficult it is to remove laws that are based on stigma and misunderstanding. To do so requires a re-think of policy, using evidence, not hear-say. The challenge for this current review is to change the minds of people who have been informed only by stigma, not by the facts.

Recommendation: Mandatory testing laws should be repealed in Victoria.

#### **b) Street based sex work**

Another example of ill-informed morality driven policy is the ongoing criminalisation of street based sex workers via the Sex Work Act 1994 offence to 'solicit or accost any person or loiter in a public place' for the purpose of sex work. The criminalisation of street-based sex workers forces sex workers to distance themselves from services and operate covertly to avoid detection. As making yourself known to police is likely to result in further surveillance and targeting street-based sex workers are unlikely to report crime to police. The targeting of street based sex workers in Victoria by police has been significant, forcing street-based sex workers to take greater risks to avoid detection, such as working alone, only at night, and in poorly-lit, isolated areas. Criminalisation of street based sex work does not stop the work occurring however it does create significant harm to sex workers.

Recommendation: Street based sex work should be fully decriminalised in Victoria.

### **2) Problem: Lack of sex worker voices being heard in policy formation in Victoria**

#### **Solution: Funding for a peer led sex worker only organisation in Victoria**

Stigma drives the confidentiality and privacy needs of sex workers. As much of Victoria's modes of sex work require compliance with impossible regulations, such as licensing and registration, (see CAV (2020)), there are numerous barriers for current sex workers to speak up and advocate about the laws. Personal stories from current sex workers do not make the news, because workers are at risk of police attention.

Moreover, there is a culture of well organised Victorian brothel owners having direct access to public platforms, policy formation, and having their opinions known. Their desires, which may stem from;

racism, perception of 'bad' operators, competition with private workers, and a general misunderstanding of the benefits of decriminalisation, have contributed to a stall in healthy debate in Victoria. No one can blame the brothel owners for communicating their perceived needs, or having them met. They have an agenda driven by profit-motive, and will defend and campaign for that with all their ability. However, sex worker voices are missing in this picture.

RhEd does not serve a productive purpose in the Victorian sex work landscape. As it is not led by sex workers, it is not structurally established to prioritise the long term needs of the sex worker community in Victoria. Any and all of their efforts are stymied by this structural issue. In 2013 the WHO, UNFPA, UNAIDS, NSWP, The World Bank and UNDP advised:

Sex workers take charge of the community empowerment process by mobilizing with other sex workers to develop solutions to the issues they face as a group, and by advocating for their rights as sex workers and as human beings.....

Community-led services, in which sex workers take the lead in delivering outreach and overseeing an HIV prevention programme, have demonstrated significant benefits in terms of HIV outcomes. They also enable sex workers to address structural barriers to their rights, and empower them to change social norms to achieve a sustained reduction in their vulnerability that goes beyond HIV.

The above describes precisely what is missing from the funding model in Victoria. Recommended international best practice and should be considered a minimum goal in the outcomes of the current review. Additionally, as WHO, UNFPA, UNAIDS, NSWP, The World Bank and UNDP advise, community empowerment is more than simply monetary investment. There needs to be a policy-feedback-loop from sex worker-led programming and outreach, back to government, and then acted upon at all levels.

When Respect Inc was being established, this activity was managed in part by Scarlet Alliance. Then there was a transition period while the new organisation set itself up, based on the identified needs of sex workers. Once established, Respect Inc was given a place within the formal STI and HIV response in Queensland, with a long term and sustainable funding contract from Queensland Health.

There is an existing sex worker peer organisation in Victoria - VIXEN. VIXEN should be supported, and resourced alongside Scarlet Alliance, to form an incorporated organisation, and run a needs analysis, for the specific reason of establishing a peer-based, community development model sex worker program. VIXEN and Scarlet Alliance are the only groups appropriate for this role.

Recommendation: The Victorian Government work with Scarlet Alliance and Vixen, to invest in a sex-worker led needs analysis and establishment costs of a sex worker organisation, followed by an ongoing secure health contract for core HIV and STI work, and human rights support for sex workers.

### **3) Problem: Advertising restrictions**

**Solution: Sex work advertising to be covered by the same advertising regulations as any other business**

Advertising restrictions in the Sex Work Act 1994 (Vic) and Sex Work Regulation Act 2016 (Vic) are excessive, significantly reducing the reasonable, efficient operation of businesses. If sex workers cannot frankly explain what is on offer, in advertising, it leads to fielding calls from customers who are looking for something the worker does not offer, significantly wasting sex workers time, increasing administration and reducing income. Additionally, trans sex workers are specifically

marginalised by these restrictions. Preventing businesses from advertising vacancies prevents individual sex workers from identifying available employment.

Recommendation: CAV (2020) has pre-existing advertising regulations in place for businesses in Victoria. All specific sex work advertising that is restricted by law should be allowed and regulated by CAV, in line with other businesses in Victoria.

**4) Problem: Licensing and Exempt sex work service provider registration treats sex work as a 'special case'**

**Solution: Full decriminalisation**

For sex work to be seen as work, it must no longer be seen as exceptional in Victorian law. Any law reform resulting from this process should be a *repeal Bill*, with additions only in the areas of human rights, such as expungement of past sex work crimes, and expansion of anti-discrimination protections.

The stigma sex workers face in Victoria is in part a result of treating sex work as needing special attention in the law. This has failed. Sex workers operate outside the law as a result, or in grey areas. This creates uncertainty within the sex worker community about rights and responsibilities under the law. Any group who is unclear about where they stand with the law is vulnerable to police corruption and becoming victims of crime.

Full decriminalisation of sex work in Victoria would treat sex work as any other work. By rolling back and repealing the existing licensing and exempt sex work service provider registration frameworks, the sex industry and sex workers would have access to the same industrial, health, privacy and human rights protections as any other Victorian. Removing the sex industry as a 'special case' from the Victorian statutes should be the aim of this review process.

Recommendation: Full decriminalisation of sex work in Victoria

**5) Problem: Safety of sex workers not prioritised**

**Solution: Let private sex workers work in co-ops, pairs, and in street based settings without risk of criminal penalty**

The Licensing and Exempt sex work service provider registration system established in Victoria is a barrier to sex worker safety. Being required to choose between working legally or safely is not fair. Sex workers, if treated like other workers, should have scope to choose the model of working that is safe for their needs at the time.

For many sex workers, the option to work with a friend, share a location, share a phone and/or share clients, is preferred. This should be able to occur without the need for a license. Numbers and limitations should be the same as for other workers - working from home, remotely, from other locations, or visiting the location of the customer. Discrimination by local councils should be able to be addressed by Anti-Discrimination protection.

Similarly street based work is the safest option at some times for some workers. The ability to just pick one client to see and pass over clients they don't want to see, without having to give out phone numbers or have a fixed location - has many benefits. For workers who choose or are limited in their budget for overheads, this is a safe and economically viable option. The criminalisation of street based sex work is not sustainable in the long run. It only creates risk and puts workers into cycles of the criminal justice system. Fines, arrests, move on orders and diversion programs are a weight on

sex workers lives for many years, pushing many back into street based sex work in order to pay for fines. It is not feasible to punish this small sector of the industry while improving the work conditions in other sectors.

We note that in 2002 the then Attorney General brought together a committee (AGSPAG) to examine the issue of street based sex work in the St Kilda area, with a range of outcomes. They note:

The Advisory Group's position has been informed by a thorough review of community and governmental approaches to the issue of street prostitution in jurisdictions throughout the world. Prohibitionist strategies have failed to limit street sex activity or its impacts on the community....

The Prostitution Regulation Act (1986) substantially reformed prostitution in Victoria, but had no impact on street prostitution, which remained illegal and continued to occur in and throughout St Kilda....

Sex workers come from all walks of life. There is no one general profile of a sex worker: marital status, education, socioeconomic status, religion, ethnicity and personal history vary from worker to worker. The majority of street sex workers are women, and male and transgender workers form distinct and separate sub-groups.

Unfortunately, like the Neave Report (1985), AGSPAG stopped short of recommending full decriminalisation. They instead continued to rely on a criminalisation, police enforcement, and a "control and punish" approach. History now tells us that, while well-intentioned, previous inquiries let down the community and failed to deliver safety or equity for street based sex workers.

Full decriminalisation means encompassing all modes of sex work, lifting all unfair criminal and regulatory restrictions, and extending civil and political protections to all sex workers, including co-ops and street based sex work.

Recommendation: Full decriminalisation of sex work in Victoria

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