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30 August 2021

Department of Justice and Community Safety (Victoria)  
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**RE: Submission on Sex Work Decriminalisation, August 2021**

Congratulations on progressing legislation and related regulations to fully decriminalise sex work in Victoria. Reform is urgently needed. The Victorian systems of licensing, criminalisation and police involvement in regulation are not working. Victoria now has an opportunity to demonstrate great leadership in adopting evidence based policy that will deliver a low cost, high compliance model of sex industry regulation that also delivers workplace health and safety outcomes for sex workers. Full decriminalisation will deliver this for Victorian sex workers and make the jurisdiction a national leader in this regard. It is important in this phase to avoid undermining the intent of decriminalisation by leaving some sex workers without access to the benefits of decriminalisation of creating regulations or planning controls that will prevent sex workers or sex industry businesses from complying.

Please accept our submission to this phase of the consultation.

Respect Inc is the state-wide sex worker organisation in Queensland. Our organisation provides comprehensive community development, health promotion, peer education, advocacy and skill sharing for sex workers state-wide. All Respect Inc offices are sex worker drop-in spaces, staffed and run by and for sex workers. The locations are Gumuy (Cairns), Meanjin (Brisbane), Thul Garrie Waja and Gurrumbilbarra (Townsville) and on the land of the Yugambeh and Kombumerri people (Gold Coast). Respect Inc team members also visit rural and regional locations on an annual basis. The Respect Inc Management Committee, members, staff and volunteers are all current or past sex workers.

We wish you the very best in this process. Please contact me on 0451 149 782 if you have questions, clarifications or would like to discuss these matters in more detail.

Regards,

Dr Elena Jeffreys State Coordinator Respect Inc

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## **Respect Inc Recommendations**

Respect Inc recommends that Vixen Collective and Scarlet Alliance be resourced to become the funded state-wide sex worker only organisation, and then funded with a long term contract for peer education and advocacy service delivery for the sex worker community and policy engagement with government.

Respect Inc recommends that sex workers, represented by Vixen Collective and Scarlet Alliance, be involved in sensitivity training and education of staff, experts and elected councillors responsible for the implementation of the Victorian Planning Policy as it is to be applied to sex work.

Respect Inc recommends the Victorian Government resource and invest in partnerships between Vixen Collective and Scarlet Alliance to engage with relevant OHS authorities to produce the WHS guidelines for full decriminalisation.

Respect Inc recommends street-based sex work should be fully decriminalised in Victoria.

Respect Inc recommends that sex workers, represented by Vixen Collective and Scarlet Alliance, be involved in sensitivity training and education of staff, experts and elected councillors responsible for the implementation of the Victorian Planning Policy as it is to be applied to sex work.

Respect Inc recommends repeal of the sex work licencing system, the Sex Work Act 1994 and associated regulations and instead for the sex industry to be regulated through standard business laws, however when standard business laws would create a barrier to parts of the sex work community participating in, or being able to, access the benefits of the decriminalisation of sex work those should be amended in consultation with Vixen Collective and Scarlet Alliance.

Respect Inc recommends repeal of mandatory testing laws and the recognition from the Victorian government that good public health outcomes for sex workers and the broader community are achieved and maintained through a well resourced sex worker only sex worker organisation providing peer-led outreach, peer education, sex worker community mobilisation and community education programs, and representation on behalf of the sex work community as well as access to free, anonymous testing not by stigmatising government intervention or regulation.

Respect Inc recommends that an education and information campaign for sex workers, to inform the community about decriminalisation, be designed, implemented and evaluated by Vixen Collective and Scarlet Alliance.

Respect Inc recommends anti-discrimination attributes of both 'sex work' and 'sex worker', and a representative model of conciliation, be considered as part of full decriminalisation in Victoria.

Respect Inc recommends home-based sex work businesses should not have to apply for permits or be required to register.

Respect Inc recommends independent and private sex workers should be permitted to work with other sex workers and with auxiliary sub-contractors and employees.

Respect Inc recommends sex workers should not face sex work-specific criminal or other regulation on advertising and instead the national standard that applies to all commercial advertising be adopted.

Respect Inc recommends expunge all SWA records and past criminal records.

## **1. How can the Victorian Government better work with and support the sex work industry to achieve better outcomes for sex workers and the industry?**

Better outcomes will be achieved by funding a sex worker-only peer organisation in Victoria. In 2013, the WHO, UNFPA, UNAIDS, NSW, 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.

Additionally, the national and Victorian HIV strategies identify sex worker peer education as a key action area, emphasising the central role of peer education and peer sex worker organisations in best practice prevention, treatment and health promotion strategies.

In order to support sex workers to achieve better outcomes for themselves and the rest of the industry, the Victorian Government should provide funding to the existing peer-based community sex worker organisation, Vixen Collective.

Vixen Collective is unfunded and runs on a volunteer basis, the organisation has built a solid reputation of trust and reliability, however not being funded severely limits the scope of support and services to the Victorian sex worker community. Due to this huge structural gap, sex workers in Victoria currently face significant barriers to accessing appropriate, non-discriminatory health and support services that are essential to our safety and our occupational and human rights. For CALD and migrant sex workers, trans and gender diverse sex workers and sex workers in regional areas, these barriers are compounded.

Vixen Collective should be supported and resourced in coordination with Scarlet Alliance to form an incorporated organisation and conduct a needs analysis for the specific purpose of establishing a peer-based, community development model sex worker program for the Victorian sex worker community, as this is recognised as best practice worldwide. This funding must include an ongoing secure health contract for core BBV and STI work, as well as regional services, Indigenous sex workers and CALD and migrant sex worker peer outreach.

Respect Inc is a strong independent sex worker organisation, with state-wide coverage across the whole of Queensland. This was enabled just over ten years ago when the health department at the time recognised the value of supporting the development of the unfunded peer-only sex worker group. The process provided funding to the unfunded sex worker group to establish its infrastructure and Scarlet Alliance was resourced to support capacity building. The initial start-up funding allowed for consultation activity in regional areas, capital grants for purchase of infrastructure, bond and related deposits for four offices, and governance costs that were necessary for transparency prior to the signing of the first long-term operational grant for the organisation. The start up grant ensured that all legal obligations and responsibilities were in place so that the organisation could begin its service delivery work.

Vixen Collective and Scarlet Alliance are the only groups appropriate to undertake this start-up work and service delivery role in Victoria. 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.

Peer-delivered projects, health promotion and outreach services are the evidence-based, best practice approach to delivering services that meet the needs of sex workers. Sex workers have better access to our own communities and understand the issues within them because of our shared experiences of living and working as sex workers. As such, sex workers are the people who should be delivering services that will be effective in reaching and being accepted by our communities. Peer-run organisations are able to train, mentor and pass on peer knowledge in a way that others cannot, having had no shared, lived experience of our work and lives.

WHO, UNFPA, UNAIDS, NSW, The World Bank and UNDP also advise that community empowerment is more than simply monetary investment, and a funding relationship between government and a peer-led sex worker organisation will result in a policy-feedback-loop from sex worker-led programming and outreach back to government, which may then be acted upon at all levels.

**Respect Inc Recommendation:** Respect Inc recommends that Vixen Collective and Scarlet Alliance be resourced to become the funded state-wide sex worker only organisation, and then funded with a long term contract for peer education and advocacy service delivery for the sex worker community and policy engagement with government.

## **2. What can the Victorian Government do to promote understanding of the changes involved in the decriminalisation of sex work?**

The government should prioritise collaboration with the sex worker community. The existing strong networks and foundations that Vixen Collective and Scarlet Alliance have already established will assist education, communication and interorganisational cooperation among all relevant agencies and individuals. Detailed information on changed regulations, such as those around advertising which have caused inconvenience and harm to sex workers, will be most effectively explained by peers. Both the intent and implementation of decriminalisation must be clearly communicated. Peer networks have the reach, access, trust of the community and ability to disseminate information that non-peer organisations don't have.

Ongoing work with police as their role and mode of operation changes is imperative. Their awareness and understanding of the new legislation and the shift in their role will ensure a smoother adaptation to new practices. Peer organisations are again best placed to conduct this work, ensuring that police understand the context of sex work and the details and rationale of the new framework.

The role of the peer-only organisation in communicating and offering access to information and education for sex workers is important to facilitate understanding of their changing rights and responsibilities under decriminalisation.

**Respect Inc Recommendation:** Respect Inc recommends that an education and information campaign for sex workers, to inform the community about decriminalisation, be designed, implemented and evaluated by Vixen Collective and Scarlet Alliance.

**3. To enable the appropriate regulation, changes will need to be made to planning controls as set out in this discussion paper. This could include changes to where sex work businesses can operate. What are your views on these changes?**

The planning controls that emerge from the decriminalisation of sex work in Victoria must be transparent and fair, or they risk undermining the spirit and intent of the changes. Victoria currently has a two-tiered industry with some in the industry being able to comply but many being unable to and are forced outside of the legal sector and criminalised. Full decriminalisation must bring all business types and sizes under fair and reasonable planning controls.

Full decriminalisation requires appropriate planning, OHS and amenity impact policies. Respect Inc notes for example the Melbourne Planning Scheme, 10.VPP.17:

***ECONOMIC DEVELOPMENT** Planning is to provide for a strong and innovative economy, where all sectors are critical to economic prosperity. Planning is to contribute to the economic wellbeing of the state and foster economic growth by providing land, facilitating decisions and resolving land use conflicts, so that each region may build on its strengths and achieve its economic potential.*

Sex industry businesses should not face discrimination in the form of zoning restrictions. Any special or particular laws that create deliberate or inadvertent barriers to the approval of brothel locations would result in brothels being unable to be covered by regulations. Effectively, they would not be compliant. If zoning is inappropriately limiting for brothels it creates unsafe working conditions for sex workers. Full decriminalisation means brothels cannot be subject to exceptional regulation when it comes to zoning. Non-discriminatory planning controls already take into consideration the size, height and density of businesses. Local councils are stakeholders and part of the effective implementation of full decriminalisation. Part of their role will be to ensure that discrimination and vexatious complaints about sex work do not become a block to the implementation of full decriminalisation.

Sophia Chin, in her thesis for Bachelor of Planning at UNSW 2017, found the following:

*The best interests for local communities are to be considered by planners assessing (Development Applications) DAs for brothels. ....Despite moral and ethical concerns, the land use of brothels will inevitably exist as there is demand for commercial sex within society. Pre-lodgment meetings for brothel applications are suggested with the provision of language translators for non-English speaking applicants to ensure communication is effective for all residents and brothel owners/operators. Planners should consider ethical and moral considerations of the community to ensure the planning of brothels is sensitive to the specific*

*place. It is essential that valid planning grounds are thoroughly investigated to provide an appropriate recommendation for a proposed brothel.<sup>1</sup>*

Commercial-scale sex work has been highly politicised in Victoria and the moral element of anti-sex work sentiment will not disappear overnight when the laws change. There is a need for the education of relevant public servants to ensure that they are in a position to protect sex workers and sex work businesses from discrimination. Relevant departments, planning and logistics staff, town planners, experts who sub-contract to local councils for advice, staff involved in on-site inspections, local council staff involved in interviewing applicants and participants on relevant decision making panels should all be trained so as to be properly equipped for their involvement in implementing decriminalisation.

In NSW and New Zealand, local council staff and elected councillors have sometimes viewed themselves as having a role in actively blocking, opposing or denying brothel applications, sex workers generally, street-based sex workers and other sex work activity. The Land and Environment Court in NSW, and the NZ Parliament, have found that such discrimination is in opposition to the intention of full decriminalisation. The full decriminalisation of sex work necessitates a whole-of-government approach. As such, it requires local councils and elected councillors to understand that their role is to facilitate, educate, become familiar with, and welcome sex work activity and applications as an indicator of the correct implementation of decriminalisation. .

Local councils are stakeholders and play an advisory and referral role in any new business under their jurisdiction. Relevant Victorian Government departments must provide leadership that clearly signals to local councils that the new laws are intended to integrate sex work activity into existing regulation, not to exclude it by denying permission to operate.

The implementation of full decriminalisation will require effort to be put into training and educating public servants and elected officials. These individuals must be thoroughly educated in the public health, public amenity and human rights benefits of full decriminalisation in order to understand their role as a support mechanism for decriminalisation, not a block. Participation by these individuals in training and education is essential for Victoria to realise the benefits of decriminalisation of sex work and avoid the discriminatory application of planning laws.

**Respect Inc Recommendation:** Respect Inc recommends that sex workers, represented by Vixen Collective and Scarlet Alliance, be involved in sensitivity training and education of staff, experts and elected councillors responsible for the implementation of the Victorian Planning Policy as it is to be applied to sex work.

Academic Penny Croft argues:

*..sex workers and service providers, and council records of complaint [prove] that... home occupations (sex services) can operate lawfully with minimal amenity impacts, and that this*

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<sup>1</sup> Chin, S 2007, "Sex In the suburbs", Thesis for Bachelor of Planning Faculty of Built Environment, University Of New South Wales,  
[https://www.be.unsw.edu.au/sites/default/files/upload/pdf/schools\\_and\\_engagement/resources/\\_notes/5A2\\_16.pdf](https://www.be.unsw.edu.au/sites/default/files/upload/pdf/schools_and_engagement/resources/_notes/5A2_16.pdf).

*type of business can provide a positive work environment.*<sup>2</sup>

Zoning and planning regulations are concerned with the street-level atmosphere, appearance and character of an area, not the nature of activity happening within an area. To impose home business permissions onto independent and private sex workers that include any form of registration or permit would only result in the majority of sex work activity taking place outside the regulations, thus creating a barrier to the implementation of rights and responsibilities that full decriminalisation aims to achieve in Victoria. Inappropriate zoning would have a negative impact on sex worker safety.

**4. To enable the decriminalisation of sex work, changes will need to be made to laws and regulations governing offences and criminal penalties, public health, anti-discrimination protections, and advertising and liquor licencing. What are your views on these changes?**

**a. regulate the sex work industry just like any other industry, by agencies such as local government, Worksafe and the Department of Health**

Respect Inc has read the discussion paper material on this topic and found it to be lacking detail and vague, leaving it open to misinterpretation. We offer here our suggestions on how to fairly regulate the occupational health and safety of sex workers and sex work businesses.

There should not be criminal penalties for occupational health and safety breaches. Any regulation should be civil, fall under the relevant civil authorities and be treated like any other business breach.

The sexual health of sex workers in Victoria is already statistically better than the average sexually active Victorian of the same age. Even under the two-tiered licensing system, sex workers have maintained good, better than average, occupational health and safety in this regard. Protecting sex workers from unnecessary overbearing or harsh regulation in the area of sexual health should be one of the goals of the new legislation and related regulations.

In order to create workable and, ultimately successful OHS guidelines, these must be developed and authored with a resourced peer-only sex worker organisation taking the lead. Vixen Collective and Scarlet Alliance should be supported to take up this role. This will require formal partnerships, resources and government investment.

**Respect Inc Recommendation:** The Victorian Government resource and invest in partnerships between Vixen Collective and Scarlet Alliance to engage with relevant OHS authorities to produce the WHS guidelines for full decriminalisation.

**b. remove offences and criminal penalties for consensual sex work, including street-based sex work in most locations**

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<sup>2</sup> Croft, P & Prior, J 2012, "Home occupation or brothel? Selling sex from home in New South Wales", Urban and Policy Research Institute, vol. 30, no. 2, 2012. <https://doi.org/10.1080/08111146.2012.679923>



Removing offences and sex work criminal penalties is essential for Victoria to provide improved rights, health and safety for sex workers as well as removing criminalisation, reducing stigma and removing police from the current role over sex workers lives and work. However, if the proposed laws only decriminalise some street based sex work the entire model will be undermined, street based sex workers will still be criminalised in some locations, police will still have a role and Victoria will not have decriminalised sex work at all.

As the Victorian legislation currently stands, under the Sex Work Act 1994 it is a criminal offence for sex workers to solicit or 'loiter' near or within view of a place of worship, school or other select locations 'frequented by children'. In enacting this, the law has forced street-based sex workers into areas that are poorly lit, have less foot traffic, are geographically isolated away from amenities including public transport, and as such create safety risks. Despite the suggestion by the Victorian government that it intends to decriminalise sex work, the proposals currently being considered still intend to subject sex workers to be separated by distance from places of worship and places children may frequent. This will effectively split the industry again into two and will maintain the criminalisation and policing of street based sex work. This will not be decriminalisation and will put street-based sex workers at a higher risk of criminalisation, becoming victims of crime, and being unable to report crime, as making one's self known to police is likely to result in further surveillance and targeting.

Without full decriminalisation, street-based sex workers will continue to be unlikely to report crime to police and will have limited access to criminal justice. The Victorian Government has claimed these laws are in place to avoid crimes occurring, yet the laws themselves are a barrier to reporting crime and ironically, actually facilitate it. Street-based sex workers in Victoria experience these laws as part of the very system that causes crime to occur in the first place, because the laws keep sex workers from accessing safe working spaces. An important aspect of this issue is that by continuing to place restrictions on where a sex worker can work, the efforts by the Victorian Government are not actually going to achieve full decriminalisation, because ongoing restrictions of street-based sex work in these areas do not stop the work occurring; however, they do create significant harm to sex workers.

Street-based sex work, like other forms of street-present activity, should be allowed and not prosecuted by the police in Victoria under a full decriminalisation model. Evidence from New Zealand shows that when decriminalised, street-based sex workers are more able to work alongside other activities in the community and access police when they need to. The decriminalisation of street-based sex work in New Zealand was accompanied by comprehensive research on the sector, and found there was no increase or decrease in the size of the street based sector as a result of decriminalisation:

*The NZPC in 2010 said there were an estimated 400 street-based sex workers nationwide, though any estimate needs to be treated with caution due to the often temporary and sporadic nature of work. More recently, it has reported no apparent increase in the number of street-based sex workers (and sex workers in general) within Christchurch, Wellington and Auckland. [48] Research indicates that these sex workers are predominantly female (although there are significant numbers of transgender people), and are predominantly Māori or Pasifika. [49] The Committee and the CSOM believed that the number of street-*



*based sex workers has remained stable since the [change in the laws][50].*<sup>3</sup>

Related research commissioned by the New Zealand Government found similar outcomes. The street sector in Christchurch changed little after decriminalisation. The street sectors in both Christchurch and Wellington were stable in the 18-month time period of the research. So it can be concluded that a similar approach in Victoria would not result in an increase in street-based sex workers.<sup>4</sup>

The New Zealand Parliamentary Report goes on to recommend against zoning street-based sex work, based upon advice from the New Zealand Police Force:

*The Police have said that prohibiting street prostitution in a particular area is likely to move sex workers to another area. There is concern that as street prostitution is prohibited in specific areas, sex workers may be forced to relocate to inherently more dangerous areas, placing additional strain on Police resources.*

Street-based sex workers in New Zealand have reported that they are more likely now to contact police in the event of a crime:

*Yeah, confident, I've got a lot more confidence, and I know that I can ring them to say, "Oh this has happened, and blah blah blah." I haven't had to do that, but I just know that I can. Cause that's the law, that's the law change. That it's legal now to be able to work, prostitution, and to do, you know. And so I was like, yeah, I just know that it's legal now. Whereas before it was all hush hush, you couldn't go to the Police, cause what would you say? "Oh I went to do this sex job, but this person, they didn't pay me". Sally, Street, Female, Christchurch.*<sup>5</sup>

The decriminalisation of street-based sex work will create safer working conditions for the small percentage of workers at any time who choose to work in street-based settings. This is important, as they deserve to benefit from full decriminalisation and be covered by available protections just as much as any other workers or model of sex industry business. There is no evidence to suggest criminalisation of street-based sex work delivers any value to street-based sex workers or that it prevents the activity from occurring.

**Respect Inc Recommendation:** Street-based sex work should be fully decriminalised in Victoria.

- c. repeal the sex work licensing system, the Sex Work Act 1994 and associated regulations, and regulate the sex work industry through standard business laws**

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<sup>3</sup> New Zealand Government 2010, *Prostitution law reform in New Zealand*, New Zealand Parliament <https://www.parliament.nz/mi/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand/>

<sup>4</sup> Abel, G, Fitzgerald, L & Brunton, C 2007, "The impact of the Prostitution Reform Act on the health and safety practices of sex workers", *Research Report to the Prostitution Law Review Committee*, University of Otago, <https://www.otago.ac.nz/christchurch/otago018607.pdf>

<sup>5</sup> Abel, G, Fitzgerald, L & Brunton, C, 2007, "The impact of the Prostitution Reform Act on the health and safety practices of sex workers", *Research Report to the Prostitution Law Review Committee*, University of Otago, <https://www.otago.ac.nz/christchurch/otago018607.pdf>

Respect Inc supports the repeal of the sex work licencing system, the Sex Work Act 1994 and associated regulations and instead for the sex industry to be regulated through standard business laws, however when standard business laws would create a barrier to parts of the sex work community participating in, or being able to, access the benefits of the decriminalisation of sex work those should be amended in consultation with Vixen Collective and Scarlet Alliance.

There are numerous issues with the current sex work laws and frameworks that both harm sex workers and are unnecessary.

For private and independent sex workers, the current licensing (and exemption) registration system has been a complete failure. For full decriminalisation of these workers to be realised, removing the registration and licensing exemption requirements is important, but not enough. The home business registration system in Victoria, if applied without amendment to sex workers, would see particular privacy and confidentiality barriers created. These barriers would push sex workers working independently and privately from home into non-compliance, and/or expose them to discrimination and compromise their safety.

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>6</sup> Research in Victoria demonstrates that the policy wastes limited health resources<sup>7</sup> by redirecting services from individuals who are symptomatic or high risk.<sup>8</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 contrary to the evidence that it constitutes flawed policy, and even though health professionals, policy experts, sex workers and researchers were united in the recommendation for repeal. Instead, changes to the Sex Work Act in 1994 inserted a provision to create the ability for the state's Health Minister to change the frequency of testing. Within this review, in line with evidence-based research, the 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 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

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<sup>6</sup> Commonwealth Department of Health and Ageing 2005, *National HIV/AIDS Strategy—Revitalising Australia's response 2005-2008*, Australian Commonwealth Government, Canberra.  
[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>7</sup> Wilson, D, Heymer, K, Anderson, J, O'Connor, J, Harcourt, C & Donovan, B 2009, "Sex workers can be screened too often: A cost-effective analysis in Victoria, Australia", *Sexually Transmitted Infections*, p. 117.

<sup>8</sup> Samaranayake, A, Chen, JM, Hocking, J, Bradshaw, C, Cumming, R & Fairley, C 2008, "Legislation requiring monthly testing of sex workers with low rates of sexually transmitted infections restricts access to services for higher risk individuals", *Sexually Transmitted Infections*, vol. 85, no. 7, pp. 540-2. doi:10.1136/sti.2009.037069.

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).

**Respect Inc Recommendation:** Repeal of the sex work licencing system, the Sex Work Act 1994 and associated regulations and instead for the sex industry to be regulated through standard business laws, however when standard business laws would create a barrier to parts of the sex work community participating in, or being able to, access the benefits of the decriminalisation of sex work those should be amended in consultation with Vixen Collective and Scarlet Alliance.

**d. (public health) repeal offences related to mandatory testing and sexual health and introduce a new public health and infection control framework for the sex work industry focused on health promotion and harm reduction**

The removal of mandatory testing has our full support; as does the shift away from a criminal approach to public health outcomes. However, the proposal to implement a public health and infection control framework that is focused on the promotion of health and harm reduction is concerning in its lack of detail. The sex industry does not need another level of regulation, and the proposed framework should not contain penalties or offences for breaching conditions or criminalisation of public health, or involve police or other authorities in the regulation of sex worker health and safety. Imposing penalties or offences would be unnecessary, discriminatory and would not align with the government's commitment to decriminalisation.

We have seen sex workers in Australia recording lower rates of STIs and BBVs than the general population and this has been achieved and is best maintained through a well resourced sex worker only sex worker organisation providing peer-led outreach, peer education, sex worker community mobilisation and community education programs, and representation on behalf of the sex work community as well as access to free, anonymous testing not by stigmatising government intervention or regulation. In Queensland, Respect Inc is advocating to repeal current public health offences including mandatory testing, the criminalisation of unprotected sex and the criminalisation of HIV-positive sex workers. In Queensland, mandatory testing has created an inefficient and ineffectual testing regime that has no benefit to sex workers, and has no positive public health outcomes. Mandatory use of condoms in sex work bookings in Queensland results in police undertaking entrapment operations, posing as clients to verbally pressure or trick sex workers over the phone to agree to unprotected sex, services the sex worker may not actually be intending to provide in person.

The attachment of criminal penalties to condom use and sexual health testing is a waste of public resources, and a site for unnecessary and pointless police harassment of sex workers.

The perception that sex workers are more infectious than the general community is not based on evidence or 'infection control', and only reinforces ignorance and stigma about sex workers as vectors of disease. Instead of criminal penalties, the government should fund a peer-based sex work organisation capable of successful health promotion engagement with sex workers. This is the most effective, evidence-based, proven and empowering model and will result in the proven best practice approach to ensuring the best health and wellbeing outcomes for sex workers, without legislating criminal penalty.

Registration of individual sex workers has been repealed in all other Australian jurisdictions, as it is recognised as creating significant barriers to compliance and disregards the privacy and safety of sex workers. The SWA requires private sex workers to register our legal, personal information and identification with the Business Licensing Authority ('exempt sex work service provider registration'). The registration of sex workers in Victoria on a permanent register with the Business Licensing Authority and the requirement for an SWA number has obvious and dangerous ramifications and should be urgently repealed.

Licensing and exempt sex work service provider registration treats sex work as a 'special case' under legislation, failing to recognise sex work as work and resulting in the perpetuation of stigma faced by sex workers. Sex workers operate outside the law as a result, or in grey areas, which creates uncertainty regarding the rights and responsibilities of sex workers under the law. Confusion surrounding legal rights and responsibilities results in vulnerability to police corruption and perpetrators of crime.

Full decriminalisation of sex work in Victoria should treat sex work as any other work and must no longer be seen as exceptional within Victorian law. By abolishing and repealing the existing licensing and exempt sex work service provider registration requirements, 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 included under the full decriminalisation of sex work in Victoria.

**Respect Inc Recommendation:** Repeal of mandatory testing laws and the recognition from the Victorian government that good public health outcomes for sex workers and the broader community are achieved and maintained through a well resourced sex worker only sex worker organisation providing peer-led outreach, peer education, sex worker community mobilisation and community education programs, and representation on behalf of the sex work community as well as access to free, anonymous testing not by stigmatising government intervention or regulation.

#### **e. strengthen anti-discrimination protections for sex workers under the Equal Opportunity Act 2010**

It is essential that the Victorian anti-discrimination protections are strengthened by the addition of 'sex work' and 'sex worker' to the Equal Opportunity Act 2010 attributes. Decriminalisation alone cannot reverse decades of legislation and policy that has effectively criminalised sex workers and many workplaces. Anti-discrimination protection is necessary as a mechanism that both sends a clear message in society that discrimination against sex workers will not be tolerated and provides sex

workers with an avenue to take action if it does occur. Effective anti-discrimination coverage must sit alongside decriminalisation for sex workers in order for sex workers to realise the same rights as other Victorians from this legislative reform.

Similar to the experience in Queensland, Victoria's current attribute 'lawful sexual activity' has been demonstrated to be too narrow and to create a barrier to the majority of sex workers reporting discrimination. The ACT has coverage under 'profession, trade, occupation or calling', which has also been proven to not provide effective coverage for sex workers.

While Respect Inc supports changes to [EOA s62](#) which would address accommodation discrimination against lawful commercial sexual activity, 'lawful sexual activity' as an attribute will still exclude sex workers, specifically marginalised sections of the sex worker community. For full protection to be enjoyed, these gaps must be addressed as part of full decriminalisation.

Queensland is currently undergoing a review of the Anti-discrimination Act and its attributes, and we have recommended to the Commission an improved approach by providing coverage against discrimination under the attributes of both 'sex work' and 'sex worker', as well as a representative model of conciliation, and we strongly recommend that the Victorian Government adopt a similar approach.

**Respect Inc Recommendation:** Anti-discrimination attributes of both 'sex work' and 'sex worker', and a representative model of conciliation, be considered as part of full decriminalisation in Victoria.

**f. amend planning controls under the Planning and Environment Act 1987 to support decriminalisation and reduce harm for sex workers**

Decriminalisation should mean that standard business practices apply to the sex industry - replacing the excessive levels of over-regulation inherent in the current licensing framework. However, where standard business practice would (or has been proven to) create a barrier to people in some sectors of the sex work community gaining access to the benefits of decriminalisation, amendments are necessary.

There are privacy and confidentiality issues that need to be elaborated upon, which were unclear in the discussion paper. Particularly for private and independent sex workers, privacy is a paramount safety issue. Work through the 'Victorian Planning Provisions' (VPP) will be an essential tool to ensure that discrimination, privacy breaches and barriers to compliance are not replicated after decriminalisation.

**Respect Inc Recommendation:** Home-based sex work businesses should not have to apply for permits or be required to register.

The current level of discrimination and stigma against sex workers means sex workers are unlikely to be able to comply. The long history of failed licensing and registration approaches in Victoria reflects this. If the amendments to the Planning Act do not ensure that this is not a requirement for sex workers in Victoria, it would undermine the entire decriminalisation model for a very large

percentage of sex workers. The outcome of home occupation registration requirements in New South Wales demonstrates the risk if there is no amendment to protect sex workers.

Private sex workers working in pairs or groups operate in a manner that does not detract from local amenity. Independent and private sex workers offer the client privacy, confidentiality and discretion. Sex work co-ops in residential areas are predictably low amenity impact, and neighbours are unaware of the activity. This is in part because sex worker clients do not want to draw attention to themselves either.

Research in NSW by Eva Cox at the University of Technology Sydney found that neighbours did not know when they had sex workers living near them:

*Firstly, in all the blocks in Woollahra and Marrickville, the respondents had quite a limited knowledge of home businesses operating in the area.... A consistent – and important factor to note – is that no respondent identified home based sex workers currently living and working in the area, not even in those areas where home based sex workers were known to operate. The most that can be said is that one respondent in Paddington was able to identify a previous home based sex worker who had since left the area, and another resident was able to identify a brothel that had closed down. An interesting point arising out of the Marrickville research was that one in five respondents said that they liked the idea of neighbours working from home as it meant they could keep an eye on the street and/or their home. The last thing to note about the awareness of home businesses is the responses to the question on when home based businesses should need to receive or seek council approval. The majority of respondents did not think that it was always necessary for home businesses to seek council approval, with most respondents suggesting that approval should be required where the home business caused general disturbance, noise or traffic problems.<sup>9</sup>*

**Respect Inc Recommendation:** Independent and private sex workers should be permitted to work with other sex workers and with auxiliary sub-contractors and employees.

**g. remove outdated advertising controls and restrictions on sex work businesses holding liquor licences.**

Advertising controls are the step-off point for a large number of fines and charges against sex workers in Queensland. We would recommend that unless all criminal charges and fines are removed from advertising this will be an avenue for criminalisation undermining the intent of decriminalisation in Victoria.

Advertising is necessary to reach clients, as it is for any business. And being able to tailor your advertising to suit the type of services one provides prevents time wasted with enquiries for services one doesn't provide. Excessive restrictions on advertising are discriminatory but also result in an excessive administrative burden. Advertising is also important to sex workers' workplace health and safety, and barriers to effective negotiation of services with prospective clients undermines sex

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<sup>9</sup> "UTS students' research on home Occupations", 2003, UTS student project under supervision of Eva Cox, [http://www.scarletalliance.org.au/library/cox\\_03](http://www.scarletalliance.org.au/library/cox_03)

worker safety strategies. Equally, when sex workers are fearful of police entrapment, surveillance, monitoring and covert policing, as is currently the case in relation to advertising and malicious reports to the police and BLA, it results in the main focus in initial interactions with potential clients being about avoiding arrest rather than being about implementing effective workplace health and safety measures commonly available to other working people. Councils should not have discretion to undermine locally implemented work health and safety by making

**Respect Inc Recommendation:** Sex workers should not face sex work-specific criminal or other regulation on advertising and instead the national standard that applies to all commercial advertising be adopted.

#### **5. What other factors do you think are important for the Victorian Government to consider in ensuring the successful implementation of sex work decriminalisation in Victoria?**

In order to support the intent and implementation of decriminalisation, current and historical registration records of sex workers held by the BLA must be destroyed and records of past sex work crimes expunged. This would work to ensure sex workers' privacy and freedom from discrimination. Registration, SWA requirements and other sex work crimes would not exist within a decriminalised sex work industry, therefore there is no justification for retaining these records.

As part of implementing decriminalisation, the Victorian Government will need to develop new workplace health and safety standards and guidelines that support the legal, human and workplace health and safety rights of sex workers. Development of these standards and guidelines should be carried out in partnership with Vixen Collective, Scarlet Alliance and the sex worker community. WHS guidelines, and strategies to implement them, will be required in direct response to the new environment decriminalisation establishes for sex workers and sex work workplaces. Implementing suitable OHS strategies for sex workers requires guidelines that are relevant to and appropriate for our workplaces and our health and safety needs. Sex workers' expert knowledge of our OHS needs is essential to developing effective guidelines.

The government should prioritise partnerships with Vixen Collective, Victoria's established, peer-run sex worker organisation, and Scarlet Alliance to ensure ongoing consultation with sex workers and effective communication pathways between government and sex workers throughout the establishment and implementation of decriminalisation. This includes working with sex workers and sex worker organisations to ensure access to mechanisms relating to anti-discrimination, industrial protections, OHS and initiatives addressing stigma and discrimination.

Stigma and discrimination against sex workers results in laws and regulations not being applied fairly, and consideration will be needed on how to address this. For example, anti-discrimination protections are necessary to send a clear message that discrimination is not tolerable and to provide an avenue for redress. Impacts of stigma and discrimination should also be taken into account when considering the ways in which existing regulatory systems create significant barriers to sex worker or sex industry business compliance because of privacy or other concerns. For example, private sex workers should be exempt from the requirement to obtain local council permits.

**Respect Inc Recommendation:** Expunge all SWA records and past criminal records.