

Consumer Affairs Victoria

Proposed Sex Work Regulations 2016

St Kilda Legal Service Co-Op Limited



Submission

BACKGROUND

About St Kilda Legal Service

St Kilda Legal Service (SKLS) is a community legal centre (CLC) that has been operating for over 43 years. We service the catchments of Port Philip, Stonnington, Bayside and parts of Glen Eira.

Our contribution to this consultation comes from the perspective that SKLS continues to support the change of the current sex work legislative model in Victoria to a decriminalised model.

Our clients and our work

SKLS provides legal information, advice, referrals, ongoing casework, representation and undertakes community legal education and law reform activities. SKLS offers generalist legal assistance through our Night Service, which is provided three nights each week and is staffed entirely by volunteer lawyers and volunteer administration. This service is supplemented by administration support and our Day Service which provides support and case work management to the Night Service as well as limited casework. In addition to the volunteer service SKLS also operates two specialist programs: the Drug Outreach Program and the Family Violence Program. Both our Drug Outreach Lawyer (**DO Lawyer**) and Family Violence Lawyer (**FV Lawyer**) perform outreaches throughout our catchment.

SKLS also employs a Community Legal Education and Law Reform Lawyer (**CLE Lawyer**) to promote education and empower clients throughout our catchment.

Our service employs only one lawyer full time, the DO lawyer. Our principal lawyer role is shared between two solicitors. Our FV lawyer is employed three and a half days per week. The CLE lawyer is employed four days per week.

SKLS promotes self-help wherever appropriate; to this end we offer some one-off advice. We provide services within the context of our casework guidelines and the capacity of our clients to take their own action. We acknowledge that self-help is often not possible due to the circumstances of our disadvantaged clients.

We adopt a holistic view of our client's needs and respond accordingly, offering an approach that promotes a more wide-ranging resolution of legal problems. There can be a range of legal and non-legal factors that compound a person's situation.

SKLS recognises the important difference between legal information and legal advice. Legal information explains the law and the legal system in general terms and is not tailored to specific cases or groups. Legal advice applies the law and relevant procedures to specific cases, providing recommendations about the best course of action suited to the facts of the case and client expectations and needs.

From 2014 to 2015 SKLS:

- Assisted 1127 new clients;
- Provided 2485 people with legal information and referrals;
- 74% of our clients were low income earners and 8% don't receive any income;
- Our DO and FV Lawyers attended seven outreach locations each week including Resourcing health & Education (RhED), a specialist service for the sex industry in Victoria;
- We provided duty lawyer services at the Street Sex Worker List at the Magistrates Court each month;
- We provided duty lawyer services at the Moorabbin Justice Centre two days a week for family violence matters;
- Our FV Lawyer worked on 268 intervention order matters which impacted 417 children; and
- Over 60 volunteers assisted in the running of our night and day services.

SEX WORK LAW

Our submission does not imply that we agree with all sex work laws, regulations and legal processes, or believe that the current legislation is fair and just. We only seek to provide specific feedback on these regulations which are linked to the restrictive legalised sex work legislative model.

The law is complex and engaging in sex work may fall inside or outside the law depending on whether an individual is working for an illegal or legal brothel, is an exempt escort or is undertaking sex work at home or on the street. Concerns have been expressed that the Victorian system of legalised sex work has resulted in a tightly controlled legal sector operating alongside a large and often vulnerable illegal sector.¹ As a result of the illegal industry, for which St Kilda is a hub, we are uniquely located to assist sex workers.

We do not collect statistics of which of our clients are sex workers, however based on organisation specific referrals, we conservatively estimate we assisted over 40 clients who wish to identify as sex workers in 2014-2015. SKLS is the only CLC in Victoria which provides sex worker specific legal advice, information and community legal education. As stated above we provide an outreach service at RhED and act as duty lawyers at the Street Sex Worker List at the Melbourne Magistrates Court.

SKLS published the Legal Issues for Professionals book in 2009 and 2011 which is a comprehensive guide for sex workers on range of legal issues. In 2013 we produced the Shining a Light on Street Workers' Rights legal information factsheets and informational pen after lengthy consultation with sex workers about what specific information was required and the best way to receive it.

¹ Sullivan, B. (1999). "Prostitution law reform in Australia: A preliminary evaluation." Social Alternatives 18(3).

SCOPE OF THIS SUBMISSION

SKLS are uniquely placed to provide insights into the legal needs sex workers within our catchment. We will be commenting on the following regulations:

1. Part 2 – Health and safety requirements
2. Part 3 – Advertising Controls

PART 2 – HEALTH AND SAFETY REQUIREMENTS

SKLS submit that the penalty listed in regulation 7 is inadequate for people who:

- a) dispute the sex worker's decision; or
- b) initiate or allow punitive action against the sex worker; or
- c) permit another person to do anything referred to in paragraph (a) or (b);
- d) misrepresent the qualities of any sex worker; or
- e) negotiate on behalf of a sex worker the sexual services to be provided by the sex worker.

The proposed penalty (40 penalty units), currently generates a \$6,066.80 fine for a person who has effectively put a sex worker in serious danger and disempowered them to make decisions and choices regarding their sexual behaviour. We recommend that for the purposes of deterring breaches of the regulations the penalty be doubled. If the penalty is raised it can be further calibrated to reflect both the seriousness of the individual offence and the financial means of the offender. A higher penalty will signify to Magistrates and law enforcement that this is a serious offence. It could help to fund victims of crime compensation schemes which would be extremely beneficial to sex workers who have experienced assault and rape and wish to make a claim.

RECOMMENDATION 1

Minimum penalties for offences related to the above listed conduct are doubled to prevent breaches of the regulations.

RECOMMENDATION 2

Clarification in Regulation 10 of how employees should be made aware of the requirements set out in regulations 7, 8 and 9 and a penalty be imposed on the applicant if that is not carried out.

Further to regulation 10 – Safety matters relevant to the suitability of applicants, SKLS submit that the phrase “sex workers, receptionists and managers” should be changed to employees or contractors to ensure that anyone who may communicate with clients is informed of these vital safety regulations. Furthermore we submit that changes should be made to clarify how employees are made aware of these requirements (e.g. in writing every six months and upon employment at the sex work service

provider). Failing notification of the requirements a penalty of 40 penalty units should be imposed on the licence applicant. This is to further curb any offending associated with the regulations to protect sex workers and empower them to make decisions about their sexual behaviour.

PART 3 – ADVERTISING CONTROLS

SKLS submit that regulation 11(4), be removed except for regulation 11(4) (c). There are already significant advertising and media communication controls within the media outlets, therefore further restrictive controls do not need to be included in the regulations.² Complaints about advertising are made to the Advertising Standards Board through Advertising Standards Bureau; considers complaints in light of all of the Codes and Initiatives.³ The third most complained about issue in advertising is sex, sexuality and nudity at 14.27 per cent of complaints.⁴ This means that in one year 876 complaints were made about sexual advertising demonstrating that the public are actively engaging with the Bureau to make complaints about advertisements of a sexual nature.

RECOMMENDATION 3

Remove regulation 11(4) except for sub regulation 11(4)(c).

The Advertising Standards Bureau standards deem any imagery or language that is exploitative and degrading inappropriate and fall under the Australian Association of National Advertisers Code of Ethics.⁵ Media outlet advertising policies and the Advertising Standards Bureau checks and balances negate the need for the regulations in this area.

RECOMMENDATION 4

Remove regulation 11(8) and 11(9) entirely.

SKLS submit that regulation 11(8) and 11(9) be removed in its entirety, print media advertisers have editorial policies which will restrict and control advertising without the need for further restrictive regulations. Since 2003 New Zealand print media advertising controls have been left to the publisher, “Newspapers accept adult entertainment advertisements based on editorial policy, which may include prohibiting certain explicit wording. Advertisers may also have to provide proof of age in order to advertise in the adult entertainment section of a newspaper.”⁶

RECOMMENDATIONS AND CONCLUSION

SKLS submit that sex workers face significant ongoing challenges. Only by protecting sex workers and ensuring that there are serious penalties if their rights are impinged can we begin the process of empowering sex workers and breaking down social stigma regarding the profession.

SKLS make the following recommendations:

² Advertising Standards Bureau – Exploitative and degrading – key concepts - <https://adstandards.com.au/products-and-issues/exploitative-and-degrading/key-concepts> - last viewed 10 February 2016

³ Advertising Standards Bureau – Frequently asked question – How are decisions of the Advertising Standards Board made - <https://adstandards.com.au/frequently-asked-questions#How%20are%20decisions%20made> – last viewed 10 Feb 2016.

⁴ Advertising Standards Bureau – Ad Standards Review of Operations 2014 – stats - <https://adstandards.com.au/blog/ad-standards-review-operations-2014-stats> - last viewed 10 Feb 2016.

⁵ See footnote, 2

⁶ Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Ministry of Justice, New Zealand, Published May 2008 - <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/2.-estimation-of-the-numbers-of-sex-workers-in-new-zealand#5> – last viewed on 10 February 2016

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