



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

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Sex Work Regulations 2016 Consultation

Policy and Legislation Branch

Consumer Affairs Victoria

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26th February 2016

To whom it may concern,

Subsequent to our submission to the review of the 'Sex Work Regulations 2006' submitted to your office in April of 2015, we attach our submission to the draft 'Sex Work Regulations 2016'.

We once again note (as we did in our covering letter to the 2015 review) that Vixen Collective is **Victoria's peer only sex worker organisation**, and raise our concerns over being initially omitted from the 2015 review. We appreciated that once this matter was brought to the attention of the CAV by Scarlet Alliance (Australian Sex Workers Association), of whom we are a member, our organisation was given the opportunity to participate.

We also raise concerns that contrary to government practice, no submissions from the 2015 review were made public. It is standard practice for all submissions to government review processes to be published – only excepting where organisations have either declined when asked, or have specifically made a request not to have their submission published.

We note that through the act of choosing to not publish submissions to this process, organisations including ours are disadvantaged with regard to both direct suppression of information supplied and through the delay of releasing information (including information that may become public in future processes).

In choosing not to publish submissions the CAV has denied the protections of parliamentary privilege¹ to any person or organisation wishing to have their submission (or any part of their submission) from the 2015 review to the 'Sex Work Act 2006' made public, creating a significant disincentive, and in effect suppressing the contributions to the prior review.

We appreciate this opportunity to contribute to the draft 'Sex Work Regulations 2016', attach our submission accordingly and would like to state that ***we specifically request that our submission – in its entirety - including this covering letter be published.***

We also attach as supporting documents to our submission, the following:

- Vixen Collective's Submission to the 'Electronic Health Records and Healthcare Identifiers: Legislation Discussion Paper', Vixen Collective, 2015.
- 'Improving the Health of Sex Workers in NSW: Maintaining Success', NSW Public Health Bulletin, Vol. 21 (3-4), Donovan, Harcourt, Egger, and Fairley, 2010.
- 'An Action Agenda for HIV and Sex Workers', The Lancet, Beyrer et al, July 22nd, 2014.
- 'Mandatory Testing for HIV and Sexually Transmissible Infections Among Sex Workers in Australia: A Barrier to HIV and STI Prevention', World Journal of AIDS, Jeffreys, E. Fawkes, J. and Stardust, Z., February 21st 2012.
- 'Unjust and Counterproductive: The Failure of Governments to Protect Sex Workers from Discrimination', Scarlet Alliance and the Australian Federation of AIDS Organisations, September 1999.
- 'Scarlet Alliance, Australian Sex Workers Association Recommendations to the UN General Assembly High-Level Dialogue on International Migration and Development', Scarlet Alliance, 2013.

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,



Jane Green

On behalf of Vixen Collective

¹ "Written submissions that are accepted by a committee are protected by parliamentary privilege. This means that no legal action can be taken against you in a court of law in relation to the evidence in your submission. However, parliamentary privilege applies only to submissions published by the committee. If you choose to publish your submission in another form, for example on your website, that publication will not be protected by parliamentary privilege. You can, however, refer others to your submission on the committee's website." Refer – Parliament of Victoria, [Making a Written Submission](#)

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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 by 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 e.g. VAC, ISCHS
- i) HIV 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, 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.



Full Decriminalisation of Sex Work – A Best Practice Model

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

Sex work in New South Wales is currently regulated under a decriminalised model of regulation, having been so since 1995. New Zealand implemented decriminalisation of sex work in 2003.

- Decriminalisation is the removal of all criminal laws relating to the sex industry, allowing sex work to be regulated like other work - this does not mean no regulation, but that sex work should be regulated like any other work.
- Decriminalisation is recognised as the world's best practice model for sex industry regulation - by the United Nations², the World Health Organisation³, Amnesty International⁴, Australia's HIV Strategy⁵, multiple medical studies⁶, and sex workers' representative organisations⁷.
- Decriminalisation recognises sex work as work, thus helping to break down stigma against sex workers and reduce discrimination.
- It has been shown that STI rates and safe sex outcomes are maximised under decriminalisation⁸.

² 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.

³ "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.

⁴ [Global movement votes to adopt policy to protect human rights of sex workers](#), Amnesty International, 11 August 2015

⁵ Australian Government Department of Health and Ageing, Sixth National HIV Strategy 2010-2013, Commonwealth of Australia, Canberra, 2010 at 6.4.

⁶ 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.

⁷ Vixen Collective Media Release, Tuesday 15th September 2015, "We recognise full decriminalisation of sex work is the only acceptable model of regulation for sex workers' human rights, labour rights, health and safety.", Signed by: Vixen Collective (Victoria's peer only sex worker organisation), Scarlet Alliance (Australian Sex Workers Association), Sex Workers Outreach Project NSW (SWOP-NSW), Sex Workers Outreach Project Northern Territory (SWOP-NT), People for Sex Worker Rights WA (PSR-WA), Resourcing health & Education Victoria (RhED), Nothing About Us Without Us (NAUWU), Debby Doesn't Do It For Free (Sex Worker Arts & Performance Collective), Touching Base Inc, Fiona Patten – MLC for Northern Metropolitan (Victoria Parliament), Victorian AIDS Council, Living Positive Victoria, Harm Reduction Victoria, Burnet Institute, Australian Research Centre in Sex Health and Society (ARCSHS), Australian Federation of AIDS Organisations (AFAO).

⁸ 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.

- 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 police⁹.
- It has been shown that sex work regulated under decriminalisation has little to no amenity impacts.¹⁰
- 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 would give sex workers better access to workplace safety, including state apparatus such as WorkSafe Victoria and the Fair Work Ombudsman.
- Decriminalisation would give sex workers greater ease to access health services, without the requirement to 'out' themselves - as is currently required in Victoria due to mandatory testing under licensing regulations - which has been shown to lead to discriminatory treatment, refusal and exclusion from medical services¹¹.
- Decriminalisation would remove for sex workers the impediment to testing and treatment for STIs/HIV that is inherent in the licensing system (which includes the criminalisation of STIs and HIV), as well as the remaining criminalisation of street based sex work¹².
- There is no evidence of organised crime within the sex industry under decriminalisation.¹³
- Greater industry transparency under decriminalisation aids anti-trafficking efforts¹⁴.
- Decriminalisation has been shown not to result in an increase in the numbers of workers participating in the sex industry¹⁵.

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

⁹ "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.

¹⁰ 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.

¹¹ The Sex Industry in NSW: A Report to the NSW Ministry of Health, 2012, pg.23.

¹² The [UNAIDS Guidance Note on HIV and Sex Work 2012](#) recognises that criminalisation poses substantial obstacles in accessing HIV prevention, treatment and support.

¹³ 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.

¹⁴ 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, \(2010\)](#).

¹⁵ "...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.

In August of 2015 every state and territory sex worker organisation across Australia endorsed a statement issued by Vixen Collective, that read (in part):

“We recognise full decriminalisation of sex work is the only acceptable model of regulation for sex workers’ human rights, labour rights, health and safety”¹⁶

Sex worker organisations not just in Australia but across the world repeatedly call for the decriminalisation of sex work. When Amnesty International released a draft policy supporting the decriminalisation of sex work (subsequent to their release of a final policy), they were attacked and vilified online by anti sex work groups, following which, sex worker organisations issued statements of support for the Amnesty International policy – confirming full decriminalisation as the preferred model:

“Sex workers and their allies campaign for the full decriminalisation of sex work to:

- *Promote safe working conditions*
- *Increase access to health services ...*
- *Increase sex workers’ access to justice*
- *Reduce police abuse and violence*
- *Help to tackle exploitation and coercion when it does occur”¹⁷*

In the case of NSWP (Global Network of Sex Work Projects), just one of the many sex work organisations supporting Amnesty International at the time, their membership represents 237 sex worker-led organisations in 71 countries.

For the Victorian Government to continue to deny this body of evidence in favour of the full decriminalisation of sex work is to fail to prioritise the human rights, labour rights, health and safety of sex workers in Victoria.

¹⁶ Vixen Collective Media Release, Tuesday 15th September 2015, Signed by: Vixen Collective (Victoria’s peer only sex worker organisation), Scarlet Alliance (Australian Sex Workers Association), Sex Workers Outreach Project NSW (SWOP-NSW), Sex Workers Outreach Project Northern Territory (SWOP-NT), People for Sex Worker Rights WA (PSR-WA), Resourcing health & Education Victoria (RhED), Nothing About Us Without Us (NAUWU), Debby Doesn’t Do It For Free (Sex Worker Arts & Performance Collective), Touching Base Inc, Fiona Patten – MLC for Northern Metropolitan (Victoria Parliament), Victorian AIDS Council, Living Positive Victoria, Harm Reduction Victoria, Burnet Institute, Australian Research Centre in Sex Health and Society (ARCSHS), Australian Federation of AIDS Organisations (AFAO).

¹⁷ [‘Statement of Support for Amnesty International’](#), NSWP – Global Network of Sex Work Projects, July 2015.

Review of the ‘Sex Work Regulations 2006’

In early 2015 Consumer Affairs Victoria (CAV) undertook a review of the ‘Sex Work Regulations 2006’, contacting those who were considered ‘stakeholders’ to this process. Notably, Vixen Collective – Victoria’s peer only sex worker organisation - was not made party to this process until Scarlet Alliance (Australian Sex Workers Association) had intervened with the CAV to raise the oversight.

The timeframe for the review process was short, under four weeks from start to finish, not providing sufficient time for the depth of community wide consultation that would generally be warranted by such a process, and providing specific stresses for community organisations having to meet such a tight deadline on short notice (especially for unfunded organisations such as ours).

As already noted in our covering letter, we are particularly concerned that given the efforts by so many to commit and contribute to the review process, the results of this review have not been released – as is standard government practice. Because submissions to the 2015 review of the ‘Sex Work Act 2006’ were not released by the Victorian Government, this means that no organisation or person contributing to the review receives:

- the benefit of parliamentary privilege on their submission
- or the publication of their submission through the CAV (on their website)

The lack of release of this information is in effect a suppression of the outcomes of the 2015 review. We also note the absence of a formal report on the 2015 review, and the overall lack of transparency in this process.

On the CAV website, in the section relating to the draft ‘Sex Work Regulations 2016’ there is the following statement:

“Unless you label your submission as confidential, your submission or its contents will be made publicly available in this and any subsequent review process. Submissions may be subject to Freedom of Information and other laws. Consumer Affairs Victoria reserves the right to not publish information that could be seen to be defamatory or discriminatory”¹⁸

We would hope this indicates that all submissions (unless specifically requested not to be released by the person/organisation submitting), in their entirety, will be released as indicated by the CAV. In the interests of transparency and due process for sex workers in Victoria, we would expect that any changes to the draft ‘Sex Work Regulations 2016’ would be accompanied by a formal report on the consultation.

¹⁸ [‘Sex Work Regulations 2016 Consultation’](#), Consumer Affairs Victoria - Website, 2016.

Draft 'Sex Work Regulations 2016'

Due to the limited nature of the changes made to the 'Sex Work Regulations 2006' as expressed in the draft 'Sex Work Regulations 2016', our submission has been separated into two parts:

- Specific commentary on the changes in the draft 'Sex Work Regulations 2016' (changes made to the 'Sex Work Regulations 2006'), and
- Overall commentary on the draft 'Sex Work Regulations 2016'

This submission has been produced by Vixen Collective, through ongoing consultation with Victorian sex workers. The submission is endorsed by Scarlet Alliance (Australian Sex Workers Association).

Specific Commentary on the Changes in the Draft 'Sex Work Regulations 2016' (Changes made to the 'Sex Work Regulations 2006')

Form and location of signage related to sexual slavery

Vixen Collective's submission to the review of the 'Sex Work Regulations 2006', under the heading 'Signage Regarding Sexual Slavery'¹⁹, covered at some length the issues presented by signage regarding sexual slavery.

The changes proposed within the draft regulations fail to take account of any of these significant issues, stating instead:

"Regulation 1(a) to (g) list the current objectives of the Regulations. ... New subregulation 1(f) added to clarify that the Regulations also prescribe the form and location of signage related to sexual slavery."²⁰

¹⁹ 'Vixen Collective Submission to the Review of the 'Sex Work Regulations 2006'', Vixen Collective, 22nd April 2015, pg.21-22.

²⁰ ['Sex Work Regulations 2016 Consultation'](#), Consumer Affairs Victoria - Website, 2016.

Although we will once again take the opportunity to outline these same issues, with regard to sexual slavery in the body of our submission, we take the opportunity to highlight here that signage regarding sexual slavery stigmatises sex workers – specifically migrant sex workers - and that a renewed commitment to maintaining this in its present form is directly against the advice of stakeholders (for further detail refer pages 36-37).

HIV criminalisation

In Vixen Collective’s submission to the review of the ‘Sex Work Regulations 2006’, under the heading ‘Sexually Transmitted Diseases’²¹, the issues presented by sexually transmitted infections, mandatory testing and HIV criminalisation is covered at some length.

The changes proposed within the draft regulations fail to take account of any of the issues raised or recommendations made by Vixen Collective, stating instead:

“The note to regulation 6 provides that HIV as defined in the Health Act 1958 is also a sexually transmitted disease. ... Updated note to clarify that the definition for HIV is the same as in the Public Health and Wellbeing Act 2008.”²²

This failure to recognise stakeholder input is especially troubling considering the repeal of HIV criminalisation in law by the Victoria Government in April 2015²³, following on from a commitment made at the international AIDS conference held in Melbourne in July 2014²⁴. At this time all HIV criminalisation under law – except criminalisation of HIV for sex workers – was repealed, leaving sex workers specifically singled out for discrimination.

Criminalisation of HIV is against UNAIDS recommendations²⁵ and contrary to public health goals, (for further detail refer pages 22-24).

²¹ ‘Vixen Collective Submission to the Review of the ‘Sex Work Regulations 2006’’, Vixen Collective, 22nd April 2015, pg.11-13.

²² [‘Sex Work Regulations 2016 Consultation’](#), Consumer Affairs Victoria - Website, 2016.

²³ [‘Victoria moves to repeal HIV-specific law criminalising deliberate infection’](#), Melissa Davey, The Guardian, 14th April 2015.

²⁴ [‘HIV-specific law criminalising deliberate transmission to be amended’](#), Melissa Davey, The Guardian, 20th July 2014.

²⁵ “Countries are further encouraged to remove punitive laws, policies and practices that block an effective AIDS response, including travel restrictions and mandatory testing, and those related to HIV transmission, same-sex sexual relations, sex work and drug use.”, [UNAIDS 2016-2021 Strategy – On the Fast Track to End AIDS](#), 2015, pg 18.

Safety requirements

In Vixen Collective's submission to the review of the 'Sex Work Regulations 2006', under the heading 'Requirements for Safety for Sex Workers'²⁶ it was indicated that the safety requirements set out in Part 2, Regulations 7 & 8, of the 'Sex Work Regulations 2006' are predicated on the ideas – driven by stereotypes – that sex work is inherently dangerous and unclean. It was specifically noted that these stereotypes overlook that it is the laws under which sex workers work that often place us most at risk.

The changes proposed within the draft regulations fail to take account of any of the issues raised or recommendations made by Vixen Collective, stating instead:

"Provides for safety requirements that must be observed by the sex work service provider whose business is or includes a brothel or an escort agency. ... Regulation 7 has been split up to clarify which safety requirements apply to brothels and escort agencies specifically, and which requirements apply to all sex work service providers.

New regulation 7 provides for safety requirements which apply to all sex work service providers. This includes offences prohibiting the misrepresentation of the qualities of any sex worker, and the ability for a sex worker to decide not to provide sexual services in potentially violent circumstances.

New regulation 8 provides for safety requirements which apply to a business that is or includes a brothel.

New regulation 9 provides for safety requirements which apply to a business that is or includes an escort agency.

Throughout regulations 7, 8 and 9, the use of the term 'his or her' has been updated to use gender neutral terminology and clearly refer to 'sex worker' or 'sex work service provider', where appropriate.²⁷

It is specifically concerning that among the core issues raised by Vixen Collective in regard to sex workers' safety – which have not been taken into account by the Victorian Government in the draft regulations - are the limitation of options of work under the licensing system and the disproportionate power this places in the hands of brothels (see pages 24-31 for further details on safety).

²⁶ 'Vixen Collective Submission to the Review of the 'Sex Work Regulations 2006'', Vixen Collective, 22nd April 2015, pg.13-16.

²⁷ '[Sex Work Regulations 2016 Consultation](#)', Consumer Affairs Victoria - Website, 2016.

It was recommended in Vixen Collective's submission to the review of the 'Sex Work Regulations 2006' that the licensing system be removed in Victoria²⁸ and that sex work be fully decriminalised for sex workers' health, safety and rights²⁹ – that this has not been implemented shows a disregard for the health, safety and rights of Victorian sex workers.

Advertising controls

In Vixen Collective's submission to the review of the 'Sex Work Regulations 2006', under the heading 'Controls on Advertising of Sexual Services'³⁰, we made a number of recommendations with regard to advertising.

We note that although two of these recommendations have been taken up, the majority of the concerns raised in our submission remain unaddressed.

"The following controls remain unchanged:

- *every advertisement for a sex work business must contain the letters 'SWA' followed by any relevant exemption number or licence number, under regulation 11(1);*
- *the font size requirement for the letters, exemption number and licence number on advertisements, under regulation 11(2);*
- *prohibition on advertisements containing a licence number or exemption number which is false or which the provider is not entitled to use, under regulation 11(3);*
- *consent requirement for persons represented in sex work advertising, under regulation 11(4)(c);*
- *restriction against reference to the health of, or any diagnostic procedure or medical testing under taken by, the person offering sexual services, under regulation 11(4)(d);*
- *restriction against a person arranging for a photograph, pictorial representation, text or other material to appear in conjunction with an advertisement for a sex work business unless that material is itself an advertisement for such a business, under regulation 11(7);*

²⁸ "In order to improve and safeguard the rights and safety of sex workers in Victoria, it must be recognised that all licensing systems harm sex workers and the licensing system in Victoria must be replaced as the regulatory model for Victorian sex work.", 'Vixen Collective Submission to the Review of the 'Sex Work Regulations 2006'', Vixen Collective, 22nd April 2015, pg.28.

²⁹ "Decriminalisation is the accepted best practice model for sex industry regulation, that benefits sex workers health, safety and rights, as well as public health. We call on the Victorian government to place the rights, health and safety of sex workers first when making decisions regarding our work, and in doing so to implement decriminalisation as the regulatory model for Victorian sex work.", 'Vixen Collective Submission to the Review of the 'Sex Work Regulations 2006'', Vixen Collective, 22nd April 2015, pg.28.

³⁰ 'Vixen Collective Submission to the Review of the 'Sex Work Regulations 2006'', Vixen Collective, 22nd April 2015, pg.17-19.

- *the physical size/dimension restriction for advertisements which appear on media other than outdoor advertising, electronic communications and the Internet, under regulation 11(8) and 11(9).³¹*

New regulation 11(4)(b) – Advertising/video recordings

With regard to draft regulation 11(4)(B) that indicates:

“..advertisement for a business carried on by a sex work service provider must not be published through radio, television, film and video recording..”³²

We seek clarification as to the definition and intent of the term “video recording”, specifically inasmuch as this is being distinguished from “radio, television, film”.

New regulation 11(5) – Advertising/internet photographs or pictorial representations

We are pleased to see new regulation 11(5) incorporates part of a recommendation made by Vixen Collective’s with regard to the removal of head and shoulders shots as being stigmatising, affecting sex workers’ safety, and being overly restrictive in comparison to other industries.

New regulation 11(5) provides that an advertisement for a business carried on by a sex work service provider that is published on the Internet may contain a photographic or other pictorial representation of a person which is not restricted to the head and shoulders, provided that the advertising does not contain a representation of any of the following:

- *the bare sexual organs, buttocks or anus of a person, or frontal nudity of the genital region; or*
- *bare breasts; or*
- *a sexual act or simulated sexual act; or*
- *a person under the age of 18 years.³³*

³¹ [‘Sex Work Regulations 2016 Consultation’](#), Consumer Affairs Victoria - Website, 2016.

³² *Ibid.*

³³ [‘Sex Work Regulations 2016 Consultation’](#), Consumer Affairs Victoria - Website, 2016.

However, this change is complicated by many caveats on photographs/pictorial representations not being restricted to head and shoulders. The introduction of a change that is complicated by so many exceptions and rules is likely to cause confusion, lead to sex workers unknowingly breaching the system, and result in arbitrary and unfair interpretation of the regulations at many levels.

Once again we would suggest there is no need to subject the sex industry to a greater level of regulation in advertising than any other industry, and any attempt to do so is inevitably driven by stigma against sex workers (see pages 31-34 for further details).

New regulation 11(6)(a) – Advertising/references to race, colour or ethnic origin

We are pleased to see that the new regulation 11(6)(a) incorporates a recommendation made by Vixen Collective to allow sex workers to refer to race, colour, or ethnic origin in advertising. As indicated in our prior submission this gives sex workers the ability to both describe themselves and their services more fully, and will eliminate unnecessary call screening and unwanted calls.

New regulation 11(6)(a) provides that an advertisement for a business carried on by a sex work service provider may now contain references to the race, colour or ethnic origin, in addition to sexual orientation, of the person offering sexual services.

Other Concerns

As indicated Vixen Collective has significant concerns about the very minimal changes made to the 'Sex Work Regulations 2006' given the substantial feedback provided by our organisation, as well as other representative peer sex worker organisations such as the Scarlet Alliance (Australian Sex Workers Association).

Sex workers' voices – as key stakeholders in our own work and lives – must be prioritised in any legislative or regulatory change, policy discussion and government action affecting sex worker community.

Current Victorian sex work regulation undermines the health and safety of Victorian sex workers. Full decriminalisation of sex work is recognised as being a best practice model for sex industry regulation, at both an international level³⁴, and within Australia³⁵. In failing to implement the full decriminalisation of sex work in Victoria the Victorian Government is failing sex workers in Victoria.

If the draft 'Sex Work Regulations 2016' is not amended to substantially incorporate the recommendations made by Vixen Collective in this submission, then the Victorian Government is making an active choice to continue to fail sex workers in Victoria.

Overall Commentary on the Draft 'Sex Work Regulations 2016'

General Operation

It must be recognised that the current regulatory model of licensing in Victoria is inherently flawed, as are all licensing models.

The licensing model itself, as well as its implementation and enforcement, both cause and contribute to multiple violations of the human rights and labour rights of sex workers, as well as being an ineffective and costly system of regulation.

- Licensing involves a significant burden to the state in terms of bureaucracy to administrate and enforce
- The costs associated with licensing are not adequately recoverable through the fees brought in by the system, making it prohibitively expensive to the taxpayer
- Because of disincentives to participate in licensing (stigma, outing, etc.) a two tiered effect is created where part of the sex industry is compliant and part non-compliant

³⁴ "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.", ['Sex Work Legislation Stands in the Way of Australia's Commitments'](#), HIV Australia, Vol. 12 No. 2, Janelle Fawkes, July 2014.

³⁵ Vixen Collective Media Release, Tuesday 15th September 2015, "We recognise full decriminalisation of sex work is the only acceptable model of regulation for sex workers' human rights, labour rights, health and safety.", Signed by: Vixen Collective (Victoria's peer only sex worker organisation), Scarlet Alliance (Australian Sex Workers Association), Sex Workers Outreach Project NSW (SWOP-NSW), Sex Workers Outreach Project Northern Territory (SWOP-NT), People for Sex Worker Rights WA (PSR-WA), Resourcing health & Education Victoria (RhED), Nothing About Us Without Us (NAUWU), Debby Doesn't Do It For Free (Sex Worker Arts & Performance Collective), Touching Base Inc, Fiona Patten – MLC for Northern Metropolitan (Victoria Parliament), Victorian AIDS Council, Living Positive Victoria, Harm Reduction Victoria, Burnet Institute, Australian Research Centre in Sex Health and Society (ARCSHS), Australian Federation of AIDS Organisations (AFAO).

- Sex workers' rights are infringed upon as the licensing system treats us as intrinsically different from other workers, requiring monitoring and control
- Sex workers' health and safety are undermined because sex workers in the non-compliant part of the sex industry are less accessible to health, outreach and sex worker organisations
- The licensing system reduces transparency in the sex industry and undermines anti-trafficking initiatives
- Sex workers are placed in an oppositional role to police in a licensing system, making it difficult for sex workers to access assistance as other members of the public do when victims of crime
- Licensing affects the most marginalised among sex worker community most; street based sex worker, trans* sex workers, ATSI sex workers and others are all disproportionately affected by both the intersectional stigma that comes from multiple marginalisation, and the struggles of working within or outside the licensing system
- Because the licensing system restricts how and where sex work may occur, sex worker autonomy and the control that sex workers have over their workplaces is reduced
- Interactions with police and the courts for those working outside the licensing system (or in parts of the sex industry that remain criminalised) lead to records with the state that are deeply stigmatising for an already marginalised population - such records can prevent sex workers accessing public housing, affect child custody, and have many other far reaching consequences

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 Queensland³⁶, where regulatory regimes have proven to be ineffective in terms of compliance³⁷ and cost recovery:

*" 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.**"³⁸ - emphasis added*

³⁶ [Regulatory Impact Statement for SL 2007 No. 192](#), Queensland Government, 2007, pg 11-12.

³⁷ "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.

³⁸ Sex Work (Fees) Regulations 2014, Consumer Affairs Victoria, April 2014, page 5.

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, and sex industry businesses are required to comply with council planning policies and make development applications for permission to operate.

Continuing to regulate sex work in Victoria under a licensing system perpetuates 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.

It must be made clear that licensing is a system that harms sex workers and cannot be updated, modified or 'improved' such that it's fundamental flaws could ever be erased.

At present in Victoria, the licensing system is comprised of four separate pieces of legislation/regulations:

" 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.*³⁹

Within the licensing system in Victoria, Victorian police fulfill an enforcement role, which creates significant barriers for sex workers accessing police assistance.

We hold concerns that subsequent to the release of the draft 'Sex Work Regulations 2016', when Vixen Collective raised the issue of the minimal nature of the changes made - specifically the failure to address sex workers' health and safety by initiating a move to full decriminalisation of sex work in Victoria – the Minister for Consumer Affairs Jane Garrett indicated in media:

³⁹ Sex Work (Fees) Regulations - Regulatory Impact Statement, Consumer Affairs Victoria, April 2014, pg.3.

"We are updating the regulations for the sex-work industry. This does not include the Sex Work Act 1994, the government legislation for the sex-work industry."⁴⁰

The logic of attempting to excuse a continued failure to address the need to fully decriminalise sex work in Victoria, because only one of the component pieces of legislation/regulation is currently under review, would essentially leave Victorian sex workers in a "catch-22" situation where the Victorian Government is never required to address issues relating to sex workers' health and safety, because the licensing system consists of more than one component piece of legislation/regulation. This is profoundly unacceptable.

Sexually Transmitted Diseases

(Sexually transmitted diseases for the purposes of sections 19 & 20 of the Sex Work Act)

When addressing this section of the draft 'Sex Work Regulations 2016', it is necessary to address the following sections of the 'Sex Work Act 1994'⁴¹:

- 18A Sex workers and clients must adopt safer sex practices
- 19 Permitting sex worker infected with a disease to work in a brothel etc.
- 20 Sex worker working while infected with a disease

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 research⁴².

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 also in high uptake of safer sex practices⁴³.

⁴⁰ ['Full body ads on the way for sex workers'](#), The Age, Richard Willingham, 28th January 2016.

⁴¹ ['Sex Work Act 1994'](#), Victoria Government, 1994.

⁴² "Persons whose consensual sexual behaviour is deemed a criminal offence may try to hide it from health workers and others, for fear of being stigmatized, arrested and prosecuted. This may deter people from using health services, resulting in serious health problems such as untreated STIs .. for fear of negative reactions to their behaviour or health status.", 'Sexual Health, Human Rights and the Law', World Health Organisation, 2015, Executive Summary – pg.3.

⁴³ "... 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

The sections (19 & 20) of the 'Sex Work Act' which amount to 'mandatory testing'⁴⁴, cause a significant number of issues for the rights and safety of sex workers:

- Mandatory testing is unnecessary with regard to STI and HIV rates within sex worker community, as medical research consistently reports rates for sex workers that are as low, or lower, than that of the general community⁴⁵, regardless of the regulatory regime in place.
- Over testing of sex workers is a waste of taxpayer's money and uses health resources that could be better devoted to high risk groups, or to free up overcrowding in anonymous services.
- Having to attend a General Practitioner (GP) or medical centre, to obtain a medical certificate, 'outs' sex workers to doctors which is stigmatising and can lead to intrusive and/or inappropriate comments and questions.
- The requirement for provision of medical certificates leads to unnecessary compiling of data on sex workers, both by medical staff and at sex industry businesses.
- There is only one confidential service in Victoria that sex workers can attend, Melbourne Sexual Health (MSH), located in central Melbourne. This is not accessible to many sex workers, especially rural sex workers, and it is a drop-in clinic (appointments cannot be made), meaning waiting times are lengthy - often between three to five hours.⁴⁶
- Sex workers attending medical services report that doctors do not have standard guidelines in place when conducting consultations in relation to mandatory STI screening, and that many doctors do not clearly understand which tests are required in order to comply with the licensing regime.
- Sex workers attending non confidential services (such as a GP or medical centre), report that many doctors are unsure of the exact requirements of providing medical certificates (for example – doctors may insist on writing certificates in a sex workers full legal name, not the sex worker's business or 'working' name). This, as previously mentioned, contributes to the unnecessary compiling of data on sex workers, as well as risking 'outing'.

⁴⁴ ['Sex Work Act 1994'](#), Victorian Government, 13th August 2013, Part 2, Regulation 19 & 20, pg. 32-35.

⁴⁵ *"Among the 140 LASH participants in Sydney who were tested for four common STIs – chlamydia, gonorrhoea, trichomoniasis, and Mycoplasma genitalium infection – the prevalence of these conditions was at least as low as would be found in women in the general population"*, The Sex Industry in NSW: A Report to the NSW Ministry of Health, 2012, pg.23.

⁴⁶ Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

- It has been reported by sex workers attending non confidential services (such as a GP or medical centre) that they have suffered discrimination in the form of refusals (an individual occasion of refusal of treatment) and exclusions (permanent exclusion as a patient of the practice) as a result of their sex worker status. This is due to a doctor learning of a worker's status as a sex worker and then refusing "on conscience"⁴⁷ to provide treatment to them.
- Sex workers attending GP's or medical centres are increasingly finding that doctors will not process their visit, or the resulting blood work and/or swabs on Medicare. This has left sex workers with medical bills of hundreds of dollars just to comply with the licensing requirements⁴⁸. The lack of Medicare coverage for sex workers' tests has also been cited by doctors as grounds for refusal of treatment⁴⁹, although we are not aware that there is any basis in fact for this claim.
- Sex workers attending medical services for STI testing and to obtain a certificate report facing inappropriate questions⁵⁰ and discriminatory treatment from both medical and ancillary staff.
- Due to window periods when testing for STI's, mandatory testing does not indicate a sex worker's actual sexual health status.
- Mandatory testing can give a false sense of security, and increase requests for unsafe practices from clients.
- Having sex worker status recorded on medical records can lead to stigma and discrimination. This is likely to have a greatly increased impact with the eventual move to electronic records management for medical records in the near future. For more information on this, please refer to our submission to the ***Electronic Health Records and Healthcare Identifiers: Legislation Discussion Paper***⁵¹, which we have attached separately as a supplemental document to this submission.

Most 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 in Victoria do.

⁴⁷ "Doctors (medical practitioners) are entitled to have their own personal beliefs and values, as are all members of society. ... When a doctor refuses to provide, or participate in, a legally-recognised treatment or procedure because it conflicts with his or her own personal beliefs and values, this constitutes a 'conscientious objection.' ... A doctor who has a conscientious objection should not be treated unfairly or discriminated against.", [AMA Website](#), Australian Medical Association, 2013.

⁴⁸ This issue is consistently reported to Vixen Collective, a report was taken as recently as Sunday the 19th April 2015 from a sex worker who had migrated to Australia and on undergoing STI testing was presented with a bill in excess of \$800.

⁴⁹ Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

⁵⁰ "...were you abused as a child?..", from interaction with doctor as reported in, Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

⁵¹ '[Submission to Electronic Health Records and Healthcare Identifiers: Legislation Discussion Paper](#)', Vixen Collective, 17th July 2015.

We also note in regard to both the draft 'Sex Work Regulations 2016' and the 'Sex Work Act 1994', that the language "sexually transmitted diseases" is outdated and stigmatising, the preferred terminology being "sexually transmitted infection"⁵².

STI and HIV Criminalisation

Laws that mandate that sex workers who test positive to an STI or HIV cannot work create the following issues:

- i) Loss of income
- ii) Disconnection from support networks
- iii) Discourages testing, especially if symptomatic, for fear of testing positive
- iv) Discourages treatment, for fear of a record of treatment while working

STI and HIV criminalisation ignore safer sex practices and beg the question - if we do not criminalise sex with an STI or HIV for the general public then how can the criminalisation of the same for sex workers be anything less than discriminatory?

When medical research has proven sex workers' sexual health is at least the same or better than the general public, and our use of safer sex techniques much greater, how is the requirement for mandatory testing of sex workers in Victoria anything less than discriminatory?

During July 2014 Melbourne hosted the 20th International AIDS Conference at which the 'Melbourne Declaration' was issued:

"To defeat HIV and achieve universal access to HIV prevention, treatment, care and support – nobody should be criminalized or discriminated against because of their gender, age, race, ethnicity, disability, religious or spiritual beliefs, country of origin, national status, sexual orientation, gender identity, status as a sex worker, prisoner or detainee, because they use or have used illicit drugs or because they are living with HIV... Governments must repeal repressive laws and end policies that reinforce discriminatory and stigmatizing practices that increase the vulnerability to HIV, while also passing laws that actively promote equality."⁵³ – emphasis added

⁵² [UNAIDS Terminology Guidelines](#), UNAIDS, 2015, pg 11.

⁵³ ['Melbourne Declaration'](#), 20th International AIDS Conference – Melbourne Australia,

At the International AIDS Conference, then Victorian Health Minister David Davis made the undertaking to remove HIV criminalisation in Victorian law⁵⁴, the new Victorian Labour Government later put this commitment into effect in May 2015⁵⁵.

It is worth noting that in both the lobbying effort around this change and in media covering the repeal, it was almost unanimously referred to as being “the only” law/offense of its type in Australia:

“The Andrews Labor Government has taken another step towards equality for people living with HIV by repealing an outdated, discriminatory law – the only offence of its kind in Australia.”⁵⁶

Yet, sex workers were specifically excluded from this change – with sections 19 and 20 of the ‘Sex Work Regulations Act’ remaining intact, and Part 2(6) of the ‘Sex Work Regulations 2006’ unchanged.

While we applaud the current Victorian Labour Government for its intent in seeking to remove HIV criminalisation in law in Victoria, we would urge the completion of the process – as the current result is that sex workers are the only group so criminalised.

As detailed above the criminalisation of both STIs and HIV is contrary to testing, treatment, and public health goals. We also note that the continued criminalisation of STIs and HIV for sex workers is against the Council of Australian Governments AIDS 2014 Legacy Statement in which Australian Health Ministers – at a Federal and State level - committed to meeting a number of goals including:

“..take necessary actions, in partnership with key affected communities and sector partners, to remove barriers to accessing HIV testing, treatment, prevention, care and support across legal, regulatory, policy, social, political and economic domains..”⁵⁷

At present this commitment is not being met, in partnership with key affected communities (either sex workers or those living with HIV), and STI/HIV criminalisation stands as a barrier to accessing treatment, prevention, care and support.

Requirements for Safety for Sex Workers

⁵⁴ [‘HIV-specific law criminalising deliberate transmission to be amended’](#), Melissa Davey, The Guardian, 20th July 2014.

⁵⁵ [‘Another Step Toward Equality For People Living With HIV’](#), Premier of Victoria – Website, 28th May 2015.

⁵⁶ Ibid.

⁵⁷ [‘COAG Health Council AIDS 2014 Legacy Statement’](#), COAG Health Council, 2014.

Safety requirements as outlined in Part 2, Regulations 7 & 8, of the draft 'Sex Work Regulations 2016' are 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 in 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 is the laws under which we work that often place us most at risk - by denying us control over our working environments, access to labour rights instruments (Worksafe, Workplace Ombudsman), ability to choose and move freely between workplaces, and adequately funded peer sex worker services.

- Part 2/Regulation 7-1 *"If a sex worker decides not to provide, or to stop providing, sexual services because the sex worker believes a situation is potentially violent or unsafe..."*⁵⁸. Colloquially known as "right of refusal" (ROR) this is essentially rendered ineffective because of the disproportionate power that licensing gives to brothels. Sex workers have few options open to choose from, with primary modes of sex work in Victoria being:
 - brothel based sex work, limited control over our workspaces
 - private sex work, registration of personal details with the state
 - street based sex work, work remains criminalised

Sex workers in brothels report having little to no ability to negotiate working conditions under a licensing system, including the ability to effectively exercise ROR.

- Part 2/Regulation 7-2 *"If a sex worker decides not to provide, or to stop providing, sexual services because the sex worker believes a situation is potentially violent or unsafe, the sex work service provider must not, (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)."*⁵⁹

Differing from the wording in the 'Sex Work Regulations 2006', it must be supposed that the intent behind this change is the protection of sex workers from undue pressure or retribution in the workplace. But absent from this change is any indication of how sex workers would seek action under this section of the regulations.

⁵⁸ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 7 (1), pg. 3.

⁵⁹ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 7 (2), pg. 4.

It was specifically outlined in our prior submission that key issues that face sex workers in Victoria are the disproportionate power given to brothels (as raised in reference to Part 2/Regulation 7-1 above) and the barriers sex workers face in accessing police and justice (raised towards the end of this section). To place this clause in the regulations, in light of the fact that the licensing system itself systemically disadvantages sex workers from seeking redress when victims of violence or discrimination – in comparison to full decriminalisation of sex work which would place sex workers level with other Victorian workers - seems tokenistic at best.

- Part 2/Regulation 7-3 *"A sex work service provider must ensure that persons acting as receptionists or telephone receptionists for the sex work service provider's business do not.. (a) misrepresent the qualities of any sex worker; or ... (b) negotiate on behalf of a sex worker the sexual services to be provided by the sex worker."*⁶⁰

It is unreasonable to expect that a sex worker should be able to control the actions of a receptionist or manager in a brothel or escort agency, or to penalise them for failing to do so. If this is not the intention of this regulation, then it should be made clearer to indicate its true intention.

- Part 2/Regulation 7-4 *"The approved manager must ensure that persons acting as receptionists or telephone receptionists for the sex work service provider's business do not.. (a) misrepresent the qualities of any sex worker; or ... (b) negotiate on behalf of a sex worker the sexual services to be provided by the sex worker."*⁶¹

As with Part 2/Regulation 7-1, the disproportionate power afforded to brothels by the licensing system means that this is essentially rendered meaningless. Sex workers indicate unwillingness to make reports due to fear of repercussions⁶², and also that in a setting of full decriminalisation with a greater range of working options available, this would reduce the power of brothels and present less of an issue.

It is also problematic that this regulation states *"..do not.. misrepresent the qualities of any sex worker.."* as sex workers often rely on concealing their identities to ensure their safety. If this provision was interpreted literally, brothels would be forced into the position of giving out sex workers' legal names, and accurate descriptions (which could lead to stalking, interpersonal violence, and inter-familial violence) over the telephone.

What exactly is the purpose of this regulation?

⁶⁰ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 7 (3), pg. 4.

⁶¹ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 7 (4), pg. 4.

⁶² Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

Additional Safety Requirements – Brothels

We note the additional of a new section in the Sex Work Regulations - Part 2/**(8) Additional safety requirements – brothels**

As an overriding comment, we are disappointed to note that instead of following our recommendation to remove requirements that give sex workers dual responsibility for ensuring regulations are followed in the areas of - concealed alarms buttons, lighting, safer-sex signs and cleaning – these have instead been separated into two sets of regulations, one for sex workers and another for business/approved managers.

We again highlight that as workers in any business, sex workers are likely to have minimal leverage over the placement of fixture - including alarms, lighting, and signage - nor over cleaning procedures in the building in which they work.

- Part 2/Regulation 8-1 *"If a business is or includes a brothel, the sex work service provider must ensure that all rooms used for sex work have a concealed alarm button, or equivalent communication device, that is in working order and can be easily accessed by the sex worker throughout the delivery of sexual services."*⁶³

This requirement perpetuates the idea that all of our clients are dangerous, which is not the case, while potentially creating a false sense of security.

Sex workers have reported that on occasions when an incident occurs that might warrant triggering of an alarm, incidents may occur within a short space of time, occur without warning, and/or not occur within proximity to alarms.⁶⁴

It has been shown that rates of violence and sexual assault against sex workers are not substantially better in brothel based sex work, but rather bear more relation to the degree of control a sex worker has over their workplace⁶⁵.

We note that specifically requiring a sex worker ensure that a brothel *"have a concealed alarm button, or equivalent communication device"*, and affixing penalties to the individual sex worker for non-compliance with this regulation, is unreasonable given that individual sex workers have minimal ability to control the fixtures in a brothel.

⁶³ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 8 (1), pg. 5.

⁶⁴ Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

⁶⁵ [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.

- Part 2/Regulation 8-2 *"If a business is or includes a brothel, the approved manager must ensure that all rooms used for sex work have a concealed alarm button, or equivalent communication device, that is in working order and can be easily accessed by the sex worker throughout the delivery of sexual services."*⁶⁶

As already mentioned in regard to Part 2/Regulation 8-2 this requirement perpetuates stigmatising ideas about sex work as dangerous, whilst creating a false sense of security, and not contributing significantly to increased safety outcomes for workers.

- Part 2/Regulation 8-3 *"If a business is or includes a brothel, the sex work service provider must ensure that all rooms used for sex work have sufficient lighting to enable sex workers to check for readily evident signs of sexually transmitted diseases."*⁶⁷

Lights are useful for health checks for those providing sexual services where a risk of transmission exists. But quite obviously not all STIs are visible to the naked eye and peer education by representative peer sex worker organisations and funding for these education efforts must remain a priority.

It is also the case that this has less relevance for those within the sex industry offering alternate services, including parts of the industry where there may be little or no sexual contact (for example: massage, BDSM), but who are nonetheless covered by these provisions.

We note that specifically requiring a sex worker ensure that a brothel *"must ensure that all rooms used for sex work have sufficient lighting"*, and affixing penalties to the individual sex worker for non-compliance with this regulation, is unreasonable, given that individual sex workers have minimal ability to control the fixtures in a brothel.

- Part 2/Regulation 8-4 *"If a business is or includes a brothel, the approved manager must ensure that all rooms used for sex work have sufficient lighting to enable sex workers to check for readily evident signs of sexually transmitted diseases."*⁶⁸

As noted in regard to Part 2/Regulation 8-4 lights are useful for those providing services where risk of transmission exists, but parts of the industry where this has little or no relevance (BDSM venues, massage etc.) are covered by the same requirements. There is need for greater emphasis on peer education and the requisite funding for these efforts.

⁶⁶ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 8 (2), pg. 5.

⁶⁷ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 8 (3), pg. 5.

⁶⁸ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 8 (4), pg. 5.

- Part 2/Regulation 8-5 *"If a business is or includes a brothel, the sex work service provider must ensure that a safe-sex sign containing an illustration that depicts the whole or a portion of an adult male wearing a condom is prominently displayed in the reception area of the business and in every room used for sex work."*⁶⁹

This relates to section 18A of the Sex Work Act (mandatory safer sex) and unfairly stigmatises sex workers, creating one law for paid sex and another for unpaid sex, despite the fact that sex workers have been shown to have better sexual health and much higher use of prophylaxis⁷⁰ - regardless of the regulatory environment.

It suggests that condoms are the only method of safer sex, which is unhelpful and inaccurate.

Safer sex methods employed by sex workers include (but are not limited to): male condoms, female condoms, dental dams, surgical gloves, veterinary gloves, lubricant, sterile lubricant, etc.

The poster displays an extremely narrow range of sexual behaviour - it implies that sex where the male is the penetrative partner is the only type of sex possible. It does not include the possibility of the use of toys, precludes non-penetrative sex, excludes other genders and sexual identities, and does not account for the wide variety of sexual practice in the sex industry.

We note that specifically requiring a sex worker *"must ensure that a safe-sex sign ... is prominently displayed"* in a brothel, and affixing penalties to the individual sex worker for non-compliance with this regulation, is unreasonable given that individual sex workers have minimal ability to control the fixtures in a brothel.

- Part 2/Regulation 8-6 *"If a business is or includes a brothel, the approved manager must ensure that a safe-sex sign containing an illustration that depicts the whole or a portion of an adult male wearing a condom is prominently displayed in the reception area of the business and in every room used for sex work."*⁷¹

As noted in regard to Part 2/Regulation 8-5, signage of this type unfairly stigmatises sex workers playing into inaccurate stereotypes of sex workers as vectors of disease, as well as depicting narrow image of safer sex and sexuality.

⁶⁹ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 8 (5), pg. 5.

⁷⁰ "...condom use for vaginal and anal sex exceeds 99% and sexually transmissible infection rates are at historic lows...", Improving the health of sex workers in NSW: maintaining success, Donovan et al, NSW Public Health Bulletin 2010, pg. 74.

⁷¹ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 8 (5), pg. 5.

Additional Safety Requirements – Escort Agencies

We note the additional of a new section in the Sex Work Regulations - Part 2/(9) **Additional safety requirements – escort agencies**

The majority of Part 2/Regulation 9-1 and 9-2 includes the requirement for sex work service providers and approved managers to provide:

- Regular contact between a sex worker and escort agency⁷²
- A mobile telephone or alternate communication device⁷³
- Free supply of condoms and water based lubricant⁷⁴

However, Part 2/Regulation 9-3 waives this requirement if:

“(a) satisfies the Director that alternative arrangements in the sex work service provider’s business provide greater safety”⁷⁵ this is unclear, and:

“(b) ensures that these alternative arrangements are followed at all times in the sex worker service provider’s business”⁷⁶ is unlikely to be capable of being complied with.

The reasoning behind this new section of the regulations is unclear, given that sex workers have long established methods of managing safety in their work.

It is also once again unhelpful to see penalties applied to sex workers under Regulation 9-1.

General Comments on Safety

Access to police for sex workers is significantly reduced due to the oppositional role sex workers and police are placed in by the licensing system⁷⁷. This is particularly acute for sex workers who work outside the licensing system or whose work remains criminalised (street based sex workers).

⁷² Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 9 (1)a and (2)a, pg. 7-8.

⁷³ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 9 (1)b and (2)b, pg. 7-8.

⁷⁴ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 9 (1)d and (2)d, pg. 8.

⁷⁵ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 9 (3)a, pg. 8.

⁷⁶ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 2, Regulation 9 (1)b, pg. 9.

⁷⁷ *“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.

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

- 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 the 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
 - 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 workers⁷⁸
 - Victorian case law on reduced sentencing for cases involving rape of sex workers (Harris/Harkopian)⁷⁹

Private sex workers in Victoria are not easily able to work from their own premises. The requirements for a sex work service provider to obtain registration as an exempt brothel are so onerous and the disincentives so great that many sex workers refer to it as a "technical impossibility"⁸⁰. 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.

The fact that many sex industry businesses are located in industrial areas in Victoria means that there is a safety risk for sex workers having to work in, and travel to and from these areas:

⁷⁸ "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.

⁷⁹ "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.

⁸⁰ Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

- 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.

Not permitting smoking in sex industry venues means that often sex workers are placed at risk by having to smoke outside venues (for example in car parks), this places sex workers at risk of harassment and attack.

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.

Controls on Advertising of Sexual Services

To be able to work as a sex worker in Victoria, yet because of the extreme controls on advertising present in the draft 'Sex Work Regulations 2016' not be able to adequately advertise one's business, is not only unreasonable but is also an impediment to business that no other workers in no other industry have to face.

While we acknowledge that changes have been made in regard to this section of the regulations (specifically with regard to Part 3/Regulation 11-5 and 11-6), controls on advertising for sex workers in Victoria are still substantial, are highly stigmatising and represent an impediment to business.

Not being able to describe oneself or the services that a sex worker offers fully in advertisements leads to sex workers having to field much higher levels of enquiries (both via telephone and electronic media), that not only use up a sex workers time but may lead to frustration and conflict when clients are persistently contacting workers that do not cater to their interests.

- Part 3/Regulation 11-1a & 11-1b *"Every advertisement for a business carried on by a sex work service provider must contain the letters "SWA" .. (A) .. exemption number .. (B) .. licence number .."*⁸¹

As mentioned elsewhere, the disincentives to participate in registration and thereby gain a SWA are high.

Workers who wish to avoid the issues associated with registration must choose either to work in a brothel (where control over one's work and workplace is limited) or to work in the non-compliant part of the industry.

The requirement for provision of SWA numbers in advertisements allows for a situation where sex workers who use false numbers or who post online advertisements without an SWA can be subject to threats and/or extortion by third parties.

Sex workers report that once registered with an SWA it is often difficult to return to work in brothels, as owners/operators on discovery that a worker has SWA may refuse to have workers on premises for fear that they are 'poaching' clients or in some way competing with the business as an independent sex worker⁸².

- Part 3/Regulation 11-4a *"An advertisement for a business carried on by a sex work service provider must not.. (a) subject to subregulation (5), contain a photographic or other pictorial representation of a person unless it is restricted to the head and shoulders.."*⁸³.

Although subregulation 5 now permits the use of shots other than head and shoulders shots on the internet – other publication formats are still restricted to head and shoulders. This is a limitation not made on other industries, and if removed for the sex industry would still leave other general advertising restrictions in place.

Due to the stigma and discrimination sex workers face, requiring "head and shoulders" shots i.e. pictures where the intent is that they are identifying - is not just disturbing due to the additional stigma this can place on sex workers (and their families), but also because it places sex workers in danger.

Sex workers have the right to make choices around what is suitable for them, in their circumstances, for their advertising.

⁸¹ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 3, Regulation 11(1)a & 11(1)b, pg. 10.

⁸² Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

⁸³ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 3, Regulation 11(4)a, pg. 10.

Being identified as a sex worker can have implications⁸⁴ including but not limited to, impacting:

- Interpersonal and interfamilial violence when 'outed'
- Can affect school age and/or older children if a parent or carer is 'outed'
- Outcome of child custody cases
- Other future employment
- Access to housing and accommodation
- Goods and services (including banking, insurance and online commerce)
- Entry to clubs or hotels
- Education (including exclusion from courses on 'morals clauses')
- Medical treatment
- Membership of trade unions
- Stalking and harassment from anti sex work groups and their members, including outing to family and in social media

It is also the case that modern technology (facial recognition software, including de-blurring and de-pixelating applications) increases risk of 'outing' for even for those sex workers who try to conceal their identities in "head and shoulders" shots - but who in an advertising environment that presented better options (the ability to take body shots, silhouettes, etc.) would not face such risks.

Head and shoulders shots can be demonstrably unsafe for sex workers, and we alone should make the decisions around whether it is appropriate for us to use identifying pictures in our advertising.

What is obvious is that this is extremely restrictive for sex workers when compared to other industries - when full body shots of nearly naked models can be used to advertise cars but not sex (when sex is the service being sold), something is wrong.

- Part 3/Regulation 11-5 *"An advertisement for a business carried on by a sex work service provider that is published on the Internet may contain a photographic or other pictorial representation of a person which is not restricted to the head and shoulders, provided that the advertisement does not contain a photographic or other pictorial representation of.. (a) the bare sexual organs, buttocks or anus of a person, or frontal nudity of the genital region; or .. (b) bare breasts; or .. (c) a sexual act or simulated sexual act; or .. (d) a person under the age of 18 years.."*⁸⁵.

⁸⁴ 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.

⁸⁵ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 3, Regulation 11(5), pg. 11.

Although subregulation 5 now permits the use of shots other than head and shoulders shots, it contains many caveats and is open to interpretation. Because of this lack of precision in definition, it is likely sex workers may unknowingly breach the regulations. It is our recommendation to remove the restriction altogether, as advertisements would be subject to the same advertising provisions as other businesses – therefore there is no need to apply additional restrictions.

- Part 3/Regulation 11-8a 11-8b 11-8c *"An advertisement for a business carried on by a sex work service provider must not exceed a size of 18 centimetres by 13 centimetres unless .. (A) it appears in outdoor advertising; or .. (B) it appears in an electronic communication; or .. (C) it appears on the Internet.."*⁸⁶.

This is unreasonably restrictive as compared to other businesses and is based primarily on stigma regarding the sex industry.

- Part 3/Regulation 11-8 *"If 2 or more advertisements for a sex work service provider are published in the same publication, apart from an advertisement referred to in paragraphs (a), (b) and (c) of subregulation (8), they must not form part of a unified whole which exceeds a size of 18 centimetres by 13 centimetres."*⁸⁷

This is also unreasonably restrictive and is not comparable to restrictions placed on any other business.

Registration

(Particulars that must be provided to the Business Licensing Authority ("BLA") by small owner-operator sex work service providers)

Registration violates the human and civil rights of sex workers, creating a permanent record of sex worker status that can affect all areas outlined in the previous section, as well as restriction of movement, and identification of travel documents⁸⁸.

- Part 4/Regulation 12-1a *"..for each person working as a sex work service provider in the business (i) all names by which the sex work service provider has been and is known .. (ii) the person's date of birth .. (iii) the person's residential address.."*⁸⁹.

This 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.

⁸⁶ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 3, Regulation 11(8)a & 11(8)b & 11(8)c, pg. 11.

⁸⁷ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 3, Regulation 11(8), pg. 12.

⁸⁸ Christine Harcourt, Sandra Egger and Basil Donovan, 'Sex Work and the Law', *Sexual Health*, 2, 2005, pg.124.

⁸⁹ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 4, Regulation 12(1)a, pg. 13.

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 (as listed in the previous section) are profound.

Requiring a residential address, when a sex worker may live with parties that are unaware of their sex worker status, and where it may place them at risk should such parties become aware is unacceptable. There have been instances reported to Vixen Collective where the CAV/BLA have sent correspondence to residential addresses, and flat-mates and/or family have opened mail on behalf of a worker and they have been 'outed'⁹⁰. Depending on an individual's circumstances this can place us at risk of extreme violence.

- Part 4/Regulation 12-1b "*..all business names under which the sex work business will be carried on..*"⁹¹.
Both this provision and Part 4 Regulation 12-1c create an administrative burden for sex workers; in knowing the details of the licensing requirements, filing their information and keeping their records up to date.
- Part 4/Regulation 12-1c "*..the business address and all telephone numbers, and any electronic addresses used in carrying on the sex work business..*"⁹².
Sex work service providers are required to provide a "business address" even though they cannot work from this address unless they have an exempt brothel license.
- Part 4/Regulation 12-1d "*.. if available, an ABN..*"⁹³.
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.
This again places sex workers at risk in an environment where their work is stigmatised and discrimination is present in many forms, by not only recording sex workers personal and business information, but also by making it accessible to the public.
- Part 4/Regulation 12-2a 12-2b 12-2c "*For the purposes of section 24(1) of the Act, if a business is, or includes a brothel, the following particulars are also prescribed .. (a) the name and address of the owner of the premises at which the business is conducted; (b) if the premises are leased, the landlord's approval and a copy of the lease; (c) a copy of the planning permit granted by the responsible authority in respect of the business..*"⁹⁴.

⁹⁰ Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

⁹¹ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 4, Regulation 12(1)b, pg. 13.

⁹² Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 4, Regulation 12(1)c, pg. 13.

⁹³ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 4, Regulation 12(1)d, pg. 13.

⁹⁴ Sex Work Regulations 2016 – Exposure Draft, Consumer Affairs, 2016, Part 4, Regulation 12(2)a 12(2)b 12(2)c, pg. 13.

These requirements (as already explained in 'Requirement for Safety for Sex Workers') are onerous, and makes the possibility of private sex workers being able to work from their own premises near impossible.

Issues of data security, data retention, and use of and access to sex worker's information remain key concerns where data on sex workers is held by government. There have been both breaches of 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.

Signage Regarding Sexual Slavery

(Signage that must be displayed in brothels regarding sexual slavery)

Trafficking has been shown not to be a feature of the Australian sex industry, according to Australian government figures, yet signage regarding 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.."⁹⁵

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.

⁹⁵ ['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.

"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.. .. 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."⁹⁶ - emphasis added

Signage regarding sexual slavery, the policies that produce it, and the enforcement of these policies all 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 work outside the licensing system due to migrant sex workers engaging in raid avoidance strategies 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

The signage specified lists both 000 and 1800 813 784 (Federal Police) - these are not numbers that sex workers are likely to call (especially if working in the unregulated section of the industry), due to the barriers that the licensing system presents for sex workers in terms of reaching out to police for assistance.

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 trafficking⁹⁷, which 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 their lives and work.

⁹⁶ [People Trafficking in Australia](#), Trends & issues in crime and criminal justice no.441, Australian Institute of Criminology, June 2012

⁹⁷ Scarlet Alliance, of which Vixen Collective is a member, is a leader in this approach with the [Scarlet Alliance Migration Project](#).

Infringement Offences and Penalties

Schedule 3 – Infringement offences and infringement penalties

All fees and penalties that relate to the licensing system are for a system that will never be cost equalised⁹⁸, and must be supplemented by Victorian taxpayers, whose money could be better spent by funding sex workers' representative organisations to do work that contributes to sex workers' rights, rather than continuing to fund a system that harms sex workers.

- 1) Offence against 17-1a of the Sex Work Act (4 penalty units) *"A person must not publish or cause to be published an advertisement for sex work services that (a) describes the services offered"*
 - As previously indicated it is a waste of time and resources for sex workers to deal with clients that are not appropriate for the services they offer, and can potentially lead to disputes if clients make assumptions as to what a sex worker's services may entail in the absence of an accurate description.
 - This is also not a constraint that any other business could reasonably expect to be subject to, nor is it reasonable to penalise sex workers for working and conducting their businesses in ways that fall within generally accepted standards or practices for other businesses.

- 2) Offence against 17-1b of the Sex Work Act (4 penalty units) *"A person must not publish or cause to be published an advertisement for sex work services that ... (b) contravenes the regulations"*
 - Leads to arbitrary and discriminatory enforcement of regulations by advertising providers and/or directories.

- 3) Offence against 17-2 of the Sex Work Act (4 penalty units) *"A person must not cause an advertisement for sex work services to be broadcast or televised."*
 - Other adult services and products are advertised on TV/broadcast, as well as adult rated television content. Sex work should not be subject to separate laws when adult images and language are already covered by a variety of laws and policies including the Commercial Television Code of Practice⁹⁹.

⁹⁸ *"..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.

⁹⁹ With complaints able to be made both with broadcasters directly and through [ACMA](#).

- 4) Offence against 17-3a of the Sex Work Act (4 penalty units) *"A person must not publish or cause to be published a statement which is intended or likely to induce a person to seek employment (a) as a sex worker"*
- This sets the sex industry apart from other businesses, and is unfairly stigmatising, because it infantilises sex workers as though we do not know our own minds, and are 'lured' or easily influenced into sex work.
 - What other businesses is able to operate, yet unable to advertise for staff?
 - Clear communication in sex industry advertisements would provide more information for both prospective and current workers when assessing work opportunities.
- 5) Offence against 17-3b of the Sex Work Act (4 penalty units) *"A person must not publish or cause to be published a statement which is intended or likely to induce a person to seek employment... (b) in a brothel or with an escort agency or any other business that provides sex work services if the employment will involve, to any extent, the employee engaging in sex work."*
- This is again (as referred to in relation to 17-3a) unfairly stigmatising to sex workers, and does not allow us to assess work opportunities with our industry.
- 6) Offence against 17-4a of the Sex Work Act (4 penalty units) *"A sex work service provider or any other business that provides sex work services must not publish or cause to be published an advertisement for the business that—(a) uses (either alone or in combination with any other word or words or letters) the words "massage", "masseur", "remedial" or any other words that state or imply that the business provides massage services."*
- Sex workers can and do offer massage (including some sex workers that offer remedial massage) as part of their services - it is an infringement on our ability to advertise our services not to allow us to use words that describe the range of services we offer.
 - Sex workers may have qualifications in a number of areas, including massage and/or remedial massage, and it unduly infringes upon our ability to advertise the skills relating to our work if we are not able to include this information in our advertising.
- 7) Offence against 17-4b of the Sex Work Act (4 penalty units) *"A sex work service provider or any other business that provides sex work services must not publish or cause to be published an advertisement for the business that... (b) holds the business out either directly or by implication as a provider of massage services."*
- As with 17-4a, this can prevent sex workers from advertising the full range of their services and/or specific skills or certifications they may have that are relevant to their services.

- 8) Offence against 21-1a of the Sex Work Act (5 penalty units) *"A sex work service provider must not (a) sell, supply or consume liquor at a brothel"*
- Clients may sometimes attempt to drink to excess prior to entering a brothel because they know that they cannot access alcohol once on premises.
 - When clients enter premises highly intoxicated, they at times can become difficult to negotiate with, can have difficulty performing (engaging in sex, achieving climax) leading to volatility, and may become belligerent, hence leading to conflict.
 - If brothels were able to obtain liquor licenses they would be subject to the same laws regarding these as other license holders and through responsible service of alcohol would be able to provide alcohol, thus minimising the impacts listed above.
 - Sex industry venues have been able to provide alcohol in NSW (supply but not sell), and sex workers report positive effects with few issues arising¹⁰⁰.
- 9) Offence against 21-1b of the Sex Work Act (5 penalty units) *"A sex work service provider must not ... (b) permit liquor to be sold, supplied or consumed at a brothel."*
- As stated above with 21-1a, this creates additional problems for sex workers in terms of managing clients that may overindulge prior to attendance at brothels, knowing that they cannot access alcohol once on premises.
- 10) Offense against 52-4 of the Sex Work Act (6 penalty units) *"If at any time while a certificate of approval is in force the licensee or the approved manager becomes aware of a change that has occurred in the information provided at any time by the licensee or the approved manager in, or in relation to, an application under section 50(1), the licensee or the approved manager must within 10 days after becoming so aware give particulars of the change to the Authority by writing signed by him or her."*
- As mentioned in relation to the requirements in Part 4/Regulation 12-1b, this is an administrative burden and is a requirement which is out of line with that of other businesses.
- 11) Offence against 60A-1 of the Sex Work Act (1 penalty units) *"A licensee must keep the prescribed signage relating to sexual slavery displayed on the premises of the sex work service providing business in such place or places that it may be read by any person on the premises"*
- As previously indicated, signage relating to sexual slavery is stigmatising to sex workers, specifically to migrant workers.

¹⁰⁰ Reported by workers that currently or have at some time worked in both New South Wales and Victoria, Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

- The focus on trafficking and slavery in the sex industry does not reflect the reality of the situation in Australia, as attested to by the Australian governments' own statistics¹⁰¹.
- Funding to work on prevention approaches to trafficking rather than a harsh punitive approach is recommended by sex worker organisations, as well as funding for migrant sex workers to work within their own community.

12) Offence against 8-3 of Sex Work Regulations (4 penalty units) *"If a business is or includes a brothel, the sex work service provider and the approved manager must ensure that all rooms used for sex work have a concealed alarm button, or equivalent communication device, that is in working order and can be easily accessed by the sex worker throughout the delivery of sexual services."*

- Alarms are premised on the idea that all clients are dangerous, and can create a false sense of security for sex workers in brothels.
- Sex workers are not necessarily safer working in brothel based sex work, as it has been shown that the degree of control a sex worker has over their working environment has greater bearing on their safety¹⁰².

13) Offence against 8-3a of Sex Work Regulations (4 penalty units) *"If a business is or includes a brothel, the sex work service provider and the approved manager must ensure that all rooms used for sex work have sufficient lighting to enable sex workers to check for readily evident signs of sexually transmitted diseases."*

- This includes the sex work service provider as having equal liability as the approved manager, but the sex work service provider has (realistically) no ability to influence the lighting in the room/s of a brothel.
- As already mentioned (under 'Requirements for Safety for Sex Workers'), not all STI's are visible to the naked eye, and peer education on sexual health and funding for this must remain a priority.
- This also overlooks the variety of services offered by sex workers, including alternate services and services with little or no sexual contact.

¹⁰¹ [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.

¹⁰² [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.

14) Offence against 8-3b of Sex Work Regulations (4 penalty units) *"If a business is or includes a brothel, the sex work service provider and the approved manager must ensure that a safe-sex sign containing an illustration that depicts the whole or a portion of an adult male wearing a condom is prominently displayed in the reception area of the business and in every room used for sex work."*

- This includes the sex work service provider as having equal liability as the approved manager, but the sex work service provider has (realistically) no ability to influence the signage in the room/s of a brothel.
- This is stigmatising to sex workers, reinforcing ideas of sex workers as 'vectors of disease', when it has been shown that sex workers have sexual health at least on par, if not better than the general community, and greater adherence to safer sex practice¹⁰³.
- The signage does not display a full range of safer sex practices, and only shows a narrow range of sexual practice (male penetrative sex), ignoring the diversity of sex workers and services offered in sex work.

The threat of penalties for those working outside the licensing system and those working under remaining criminalisation (street based sex workers) 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"¹⁰⁴ 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. Street based sex workers subject to penalties due to their work, may struggle to pay penalties and then work to do so, potentially 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.

This 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.

¹⁰³ "...condom use for vaginal and anal sex exceeds 99% and sexually transmissible infection rates are at historic lows...", Improving the health of sex workers in NSW: maintaining success, Donovan et al, NSW Public Health Bulletin 2010, pg. 74.

¹⁰⁴ ['St Kilda sex worker calls out on Red Umbrella Day for more effort to find Tracey Connelly's killer'](#), Bayside Leader, December 18th 2013

Other comments on the regulations/licensing system

Myths and Stereotypes That Affect Legislation

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) that 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).."¹⁰⁵*

¹⁰⁵ Sex Workers and Sexual Assault in Australia, Australian Institute of Family Studies, No.8, Quadara, A., 2008, pg.11-12.

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

What is key, 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.

Anti-Discrimination Protections on the Basis of Occupation

Although Victoria is one of the states in Australia that offers some protection against discrimination for sex workers¹⁰⁶, because this protection is based on "lawful sexual activity" rather than on the basis of occupation¹⁰⁷, the protection is incomplete and excludes those workers outside the licensing system or those subject to criminalisation (street based sex workers). In an environment of prevailing stigma and discrimination, this lack of protection for sex workers under the law, combined with the inability of sex workers to access justice generally (either criminal or civil, as discussed later in this submission), contributes to disempowerment of sex workers and compounds discrimination.

Funding for Peer Sex Worker Organisations

Much of the funding for sex workers' representative organisations originally coincided with the peak of HIV funding¹⁰⁸. In the current environment, sex workers' representative organisations must remain focused on maintaining health and outreach targets while facing new challenges (emerging technologies that impact on our work, responding to whorephobia within the modern media news cycle, etc.) with ever dwindling funding streams. At the same time, there is competition for funding

¹⁰⁶ The other states being the Australian Capital Territory and Tasmania.

¹⁰⁷ The Law Handbook 2015, <http://www.lawhandbook.org.au/handbook/ch17s01s02.php>

¹⁰⁸ "The partnership approach.. linked to a core funding arrangement between the Federal Government, States and community organisations..", [Successful HIV/AIDS Prevention Strategies In Australia: The Role of Sex Worker Organisations](#), Saunders, P., 1999, pg.1.

from non-peer (non sex worker) agencies who gain funding and then form policies that affect our communities without any consultation with sex workers or our representative organisations.

Victoria is Falling Behind in Sex Work Policy

Victoria has fallen behind in terms of its approach to regulating sex work. As previously mentioned the United Nations¹⁰⁹, the World Health Organisation¹¹⁰, Australia's HIV Strategy¹¹¹, multiple medical studies¹¹², the Scarlet Alliance (Australian Sex Workers Association)¹¹³, and countless other sex worker organisations all call for the full decriminalisation of sex work.

Both New Zealand (where sex work was decriminalised in 2003) and New South Wales (where sex work was decriminalised in 1995) 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 in July 2014, there is commitment from other members of government and policy makers from across the Asia-Pacific to move towards decriminalisation¹¹⁴.

It is imperative that Victoria 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.

¹⁰⁹ 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.

¹¹⁰ "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.

¹¹¹ Australian Government Department of Health and Ageing, Sixth National HIV Strategy 2010-2013, Commonwealth of Australia, Canberra, 2010 at 6.4.

¹¹² 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.

¹¹³ "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.

¹¹⁴ "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 that the rights of sex workers be recognised and for the safety of sex workers to be given protection by law.

Sex workers are the experts in our own lives and work, yet sex workers' representative peer organisations are routinely excluded from discussions about law, policy, and enforcement by government, regulators, and officials. It must be recognised that sex workers have information that is critical to these discussions, because we are the experts on sex work. It must be recognised that sex workers are the key stakeholders in these discussions, because the laws and policies that are produced affect our lives and work profoundly.

Vixen Collective recommends that the Victorian government - in consultation with sex workers and their representative peer sex worker organisations - does the following:

- 1) *In order to improve and safeguard the rights and safety of sex workers in Victoria, it must be recognised that all licensing systems harm sex workers, and the licensing system in Victoria must be replaced as the regulatory model for Victorian sex work. **We call on the Victorian Government to recognise the need to replace the licensing system as the system for regulating sex work in Victoria, and to undertake the necessary steps to do so, in consultation with sex workers and our representative peer sex worker organisations.***
- 2) *The most marginalised in sex worker community are affected most by the criminalisation of the sex work:*
 - a) *This includes the criminalisation of street based sex work, which is a barrier to workers accessing police and justice*
 - b) *This includes HIV criminalisation for sex workers which remains a barrier to both testing and treatment***We call on the Victorian Government to remove all remaining criminal laws relating to sex work in Victoria.**

3) *Medical research has shown that sex workers in Australia have sexual health as good as, or better than, the general population, and higher compliance with safer sex practices. It is time for mandatory STI and HIV testing for sex workers to end, as this is:*

- a) Unnecessary in light of sex workers' high levels of sexual health and compliance with safer sex practice*
- b) Contributes to stigma and discrimination for sex workers*
- c) Is an ongoing burden on public health resources, and funding*

We call on the Victorian Government to end mandatory STI and HIV testing for sex workers in Victoria.

4) *Full decriminalisation of sex work is the accepted best practice model for sex industry regulation, this benefits sex workers' health, safety and rights, as well as public health.*

We call on the Victorian Government to place the rights, health and safety of sex workers first when making decisions regarding our lives and work, and in doing so to implement the full decriminalisation of sex work as the regulatory model for sex work in Victoria.

5) *Although full decriminalisation of sex work is a necessary step in recognising the rights of sex workers, until there is complete protection in the form of anti-discrimination legislation in Victoria, sex workers are without recourse if discriminated against on the basis of their occupation.*

There must be full coverage under Victorian anti-discrimination law against discrimination on the basis of occupation for sex workers.

We call on the Victorian Government to address the issue of discrimination on the basis of occupation, in consultation with sex workers and our representative peer sex worker organisations, so that sex workers are adequately protected against discrimination on the basis of occupation in Victoria.

6) *Sex workers' lives and work are not a 'funding opportunity'. Funding for work related to sex work and sex workers MUST go to peer only sex worker organisations. Organisations that are currently receiving funding that are not peer based must either:*

a) have a plan to end current funding arrangements so that funding relating to sex work can be passed to peer sex worker organisations

b) plan to devolve their organisation into the hands of sex workers

Victoria's peer sex worker organisation has been in operation in Victoria for ten years, unfunded, while all funding is currently directed to non-peer organisations.

We call on the Victorian Government to assess current funding arrangements and address the urgent need for funding the work of peer only sex worker organisations.

7) *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, and policy makers on any legislation, its implementation, and its enforcement.*

We call on the Victorian Government to recognise our community, sex workers and our peer representative sex worker organisations and consult us accordingly on matters relating to our lives and work.

Glossary of Terms

Non Peer - A non sex worker. When used to describe an organisation this means that although there is the possibility that there may be some sex worker staff 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 current or former sex workers.

Private Worker/s - 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, ie an individual sex worker working for themselves rather than in a brothel.

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.

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