

26 February 2016

Sex Work Regulations 2016 Consultation
Policy and Legislation Branch
Consumer Affairs Victoria
GPO Box 123
Melbourne VIC 3001
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Re: Amendments to the Sex Work Regulations 2006

Inner South Community Health (ISCH) is the leading provider of support, health information, referral and advocacy services to the Victorian sex industry through the Resourcing Health and Education in the Sex Industry (RhED) Program. For more information on the program see [Attachment A](#).

ISCH advocates for the decriminalisation of all forms of sex work in Victoria. The sex industry, like any other industry, is subject to a broad range of laws such as criminal, taxation, migration, labour and health legislation which are adequate to protect their rights and regulate their industry. The *Sex Work Act 1994* and Sex Work Regulations 2006 have led to a two tiered system of compliant and non-compliant sex work in Victoria, resulting in increased risks and stigma for those working in the industry.

There is now a strong evidence base supporting the benefits to community health and safety and protection of the rights of sex workers from the decriminalisation of sex work. In 2014, respected medical journal, *The Lancet*, published a series of papers that investigated the complex issues faced by sex workers worldwide and called for the full decriminalisation of sex work. Based on this evidence base, Amnesty International recently adopted a recommendation to “develop a policy that supports the ‘full’ decriminalization of all aspects of consensual sex work”.

As governments seek to reduce business costs of regulatory compliance, reviewing the Sex Work Regulations 2006 is an opportunity for the government to overhaul all legislation relating to sex work and the sex industry.

Where sex industry specific regulations are identified and need to be maintained, ISCH recommends that it would make better sense to adjust other relevant legislation to include these requirements. For example, safety concerns could be addressed in other existing legislative frameworks such as the *Public Health & Wellbeing Act 2008* or OH&S legislation.

While ISCH is calling on the Government to enact full decriminalisation of sex work, the remainder of this Submission provides comments on the proposed changes

We thank you for the opportunity to comment on the proposed revisions. Should you require any further information or wish to discuss any elements of this submission, please do not hesitate to contact my office on (03) 8644 3347 or at dferrie@ischs.org.au

Yours sincerely

Damian Ferrie
Chief Executive Officer

Comments on the proposed revisions to the Sex Work Regulations

Regulation 5 – Definitions

An amendment has been made to bring definitions defined in the Regulations to have the same meanings as the Business Names Act 1962.

This is unnecessary duplication. ISCH recommends that legislation under the *Sex Work Act 1994* and the Sex Work Regulations be regulated under current Australian and Victorian legislation and that the Sex Work Act 1994 and accompanying legislation be removed.

Regulation 6 – Sexually Transmitted Diseases

In the Sex Work Regulations the terminology “sexually transmitted disease” is used. This is incompatible with other legislation e.g. Public Health and Wellbeing Act 2008.

Within the sex and health industry, the terminology now preferred is “sexually transmissible infection”. In addition, all references to “safe” sex are now referred to as “safer” sex, as no sexual practice is 100% safe.

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All sexually active people, sex workers included, share the responsibility to practice safer sex. Research repeatedly shows that sex workers have the lowest rate of sexually transmissible infections (STIs) in the general community. Sex workers use condoms as part of standard practice.

The World Health Organisation's (WHO) 45th World Health Assembly, to which all countries were a signatory, stated with respect to sex workers, that "there is no public health rationale for any measures that limit the rights of the individual, notably measures establishing mandatory screening". Given both the research and the WHO statement, it is discriminatory to burden sex workers with the stigma of being a major risk of STI transmission when the evidence does not support this.

With respect to the proposal to amend Regulation 6 to clarify that the definition for HIV is the same as in the Public Health and Wellbeing Act 2008, i.e. 'sexually transmitted infection'. Again, this seems unnecessary duplication.

ISCH recommends that all matters relating to sexual health of sex workers be moved to the Public Health and Wellbeing Act 2008 and that the term "sexually transmissible infection" be used to replace "sexually transmitted disease" and "sexually transmitted infection".

Regulation 7 – Safety requirements

The Sex work Regulations set down safety requirements that must be observed by the sex work service provider whose business is or includes a brothel or an escort agency.

Regulators of the sex industry stigmatise and discriminate sex workers by having specific regulations addressing people who work in the sex industry. For example, Sex Work Regulations 2006:

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).*

Yet related OHS obligations have existed since 1985 and apply to brothels as much as they do to any other Victorian workplace. Sex workers and brothel operators already have a safety obligation via the *OHS Act 2004*. They are not exempt from the *OHS Act 2004* by virtue of the *Sex Work Act 1994*. Removal of the Sex Work Act would reinforce to workers and business owners that workplace safety obligations extend beyond the sex work laws and support CAV's emphasis on its website about the relevance of WorkSafe Victoria's inspectorate regime.

ISCH recommends that all safety requirement legislation that pertains to sex work be removed from the Sex Work Regulations, as it already exists in the Victorian *OHS Act 2004*.

Regulation 8 – Safety matters relevant to the suitability of applicants

Regulation 8 provides that, for the purposes of matters to be considered in determining the suitability of a licence applicant, the applicant must ensure that all sex workers, receptionists and managers are aware of the safety requirements in the Regulations.

As above in Regulation 7, Sex Work Regulations amendment is not needed. It is unnecessary duplication of the existing Victorian *OHS Act 2004*. ISCH recommends that all safety requirement legislation that pertains to sex work be removed from the Sex Work Regulations as these measures are adequately addressed in the Victorian *OHS Act 2004*.

Regulation 9 – Advertising controls

Regulation 11 (previously 9) has been amended to clarify what a sex work service provider may and may not include in advertising for the sex work business.

It is noted that changes are proposed to reflect the utilization of the internet. ISCH recommends that advertisements relating to the sex industry should be regulated by the *Fair Trading Act 1999* and *Summary Offences Act 1966*. These legislative frameworks include penalties for misleading or deceptive conduct, false representations, observation or visual capturing e.g. advertising of live sexually-explicit entertainment.

An independent sex worker, also making a submission for the changes to these Regulations, has asserted that "*It is blatant discrimination that sex workers face such micro-management in advertising*". She states that "*proposals stem from the idea that sex workers are intrinsically exploited and/or unpleasant, and as such need to be protected or controlled by third parties, in this case CAV and Victorian government.*"

ISCH agrees with these statements and asserts that such examination can result in further preservation of stigma and discrimination.

ISCH recommends that controls on advertising should be removed from Sex Work Regulations and regulated under the *Fair Trading Act 1999* and the *Summary Offences Act 1966*.

Regulation 10 – Small owner-operated sex work service providers

Regulation 12 (previously 10) prescribes the particulars that a person who intends to rely on an exemption under section 23 of the Act must provide to the Authority before commencing business.

Sex workers who operate as sex work service providers have to provide their details to the Business Licensing Authority (BLA) when they register and provide an annual statement to obtain a Sex Work Act (SWA) number. A SWA number is required if they want to advertise in Victoria.

This regulation is an unnecessary and costly burden on small owner-operated service providers. Further, the different regulatory frameworks across different states also add confusion and increase compliance costs for providers moving interstate. In line with efforts to cut red tape for businesses in Victoria, this regulation should be removed.

The fear of registration leading to information sharing and privacy issues is also a significant concern for many sex workers. In some cases, smaller owner-operated service providers do not want to disclose their business activity due to stigma and discrimination. Although assured that the Register is not available to the general public, sex workers may choose not to register as they fear that the information will be available and may limit their employment and travel. For example, people are aware that the United States will not let permit entry to the country to anyone in who has worked in the sex industry, and/or is working in the sex industry. In addition, sex workers transitioning into other employment e.g. school teaching, nursing, social work, healthcare are fearful that their sex work will be revealed when they have to undergo Police Checks and Working with Children Checks. Given the significant numbers of tertiary students working in the sex industry to finance their study, these transitions are common.

Despite assurances from the Business Licensing Authority and RhED workers that having their name recorded on a register in Victoria would not limit/impinge on travel and visas, nor police checks, there remains uncertainty about which regulatory bodies have access to this information and how the information may be used. Consequently some sex workers have not registered and work outside the licensing system. RhED receives many anecdotal reports from independent sex workers. The most recent include:

8/01/2016 Received phone call	SW expressed concern over obtaining alternative employment in social work, as her details are recorded with the BLA as an exempt escort.
20/01/2016 Received Facebook	“Hi there, wondering about the details re: the march on 31st Jan? I don’t want to like the page on facebook for fear of outing, can you privately message any details? thank you x.” NB. Although not directly related to registering as a SWA, it is an indicator of the concern sex workers have of being identified.
17/09/15 Received from BLA	“We receive phone calls from exempts and individuals wanting to register but concerned their names will appear on police checks and so forth.”

ISCH recommends that the requirement for independent sex workers to register with the BLA and obtain a SWA be removed as this is unnecessary compliance burden on sex workers. Removal of this regulation would reduce confusion for workers and increase compliance with Victorian legislation. ISCH recommends that the *Planning & Environment Act 1987* restrictions for smaller owner-operated businesses are adopted as the only restrictions applying to private sex workers removing any additional requirements to those pertaining to any other small business.

Part 5 – Other matters, Signage – sexual slavery

Part 5 prescribes particulars for sexual slavery signage, certificate of registrar and infringement offences.

ISCH condemns sexual slavery and the trafficking of people into any industry (including the sex industry) and commends recent State and Federal Government commitments to addressing human trafficking.

No other workplace is required to display signage relating to slavery and/or trafficking despite increased numbers of reported cases from other professions to the Department of Immigration, for example concerning restaurant workers and fruit pickers. The singling out of the sex industry for signage contributes to further stigmatise and marginalise the sex industry.

While slavery signage requirements contribute to stigma and have not been shown to have any positive impact in tackling the issue of human trafficking, Amnesty International reports that decriminalisation of sex work results has a positive impact in empowering sex workers to demand their rights, contributing to better working conditions and standards, a more transparent industry and greater oversight of commercial sex and potential trafficking within the sector. When they are not threatened with criminalisation, sex workers are also able to collaborate with law enforcement to identify traffickers and victims of trafficking.

ISCH argues that sexual slavery signage contributes to attitudes which conflate sex work with human trafficking, whereas these are separate issues. This conflation strongly devalues the legitimacy of the sex work occupation, in which the vast majority of sex workers make informed choices to enter the industry in the same way that any person chooses an occupation.

ISCH recommends the removal of sexual slavery signage from licensed sex work businesses to reduce stigma and discrimination in sex work workplaces.

ISCH recommends that sexual slavery be regulated under the current Australian laws criminalising human trafficking which are contained within the *Commonwealth Criminal Code Act 1995*. Divisions 270 and 271 of the *Criminal Code Act 1995* contain offences for human trafficking, slavery, and slavery-like practices including servitude, forced labour, deceptive recruiting for labour or services, debt bondage, and forced marriage.

Part 5 Other matters – Infringement notices

Part 5 prescribes particulars for sexual slavery signage, certificate of registrar and infringement offences.

There is currently a disparity in penalty units between Sex Work Regulations and OHS laws which is inconsistent and unfair. For example, the Sex Work Regulations propose 40 penalty points for an employer who disputes a sex worker's decision against unsafe work. Whereas, under current OHS laws, if an employee fails to take reasonable care of their health, a prosecution could lead to 1800 penalty points. If an employer fails to take reasonable care or fails to provide a safe workplace, they could face up to 1800 penalty units for a natural person or 9000 penalty units for a body corporate.

ISCH recommends that the sex industry be decriminalised and that infringement offences and penalties would apply from other contravened legislation, i.e. the *OHS Act 2004*.

CONCLUDING COMMENTS

International evidence from Amnesty International and The Lancet shows that decriminalisation will:

- **Reduce the risk of violence:** Sex workers will be more likely to report violence to police if they are confident they themselves will not be arrested for their work. They will be able gain greater assistance and legal protection in relation to harassment, violence, rape, and attempts at extortion or criminal interference.
- **Protect rights:** Decriminalisation will allow all workers in the sex industry the rights bestowed on all other workers, especially improved health and safety standards and working conditions.
- **Promote health:** Sex workers have been shown by Australian medical research to have lower STI/HIV rates than the general population and yet in Victoria are subject to mandatory health testing. An end to forced testing will allow sex workers to manage their health needs with dignity.
- **Reduce stigma:** Decriminalisation begins a process which will reduce the stigmatisation of sex work, allowing the declaration of sex work as a legitimate vocation without discrimination. Decriminalisation places greater control in the hands of sex workers to operate independently, self-organise in informal cooperatives and control their own working environments.

Sex workers are protected by the same laws as the whole community and do not need separate laws to govern their lives or their transactions. Likewise, the whole of the sex industry is subject to criminal, taxation, migration, labour and health legislation and does not need further regulation.

ATTACHMENT A

Inner South Community Health (ISCH) and Resourcing Health and Education in the Sex Industry (RhED) Program

Inner South Community Health (ISCH) is a multi-sited community health agency and a major provider of health and community services. Approximately 290 staff work in multi-disciplinary teams to deliver programs and services across key sites at Prahran, St. Kilda and South Melbourne.

ISCH values collaboration and works effectively as part of the local service. As a service we pride ourselves on developing innovative responsive services to meet community needs. For more information please visit our website www.ischs.org.au

As a program of ISCH, the Resourcing Health and Education in the Sex Industry (RhED) program works from a social model of health, using harm minimisation, health promotion, social inclusion, and community participation approaches to promote physical, emotional and social health. RhED aims to improve the health and wellbeing of sex workers across Victoria. The objectives of RhED are:

- i. To provide relevant health promotion and support services to improve the health and wellbeing and minimise risk to sex workers.
- ii. To use a community participation model to ensure the responsiveness of RhED to the needs of sex workers.
- iii. To advocate for systemic and legal changes to improve the health and wellbeing of sex workers including reducing discrimination and violence against sex workers, increasing the social inclusion of sex workers and promoting equitable access to health and other relevant services for sex workers.
- iv. To develop and strengthen key partnerships that support RhED to achieve positive health and wellbeing outcomes for sex workers.

RhED advocates that the entire sex industry in Victoria would benefit from full decriminalisation, with relevant legislation governing specific occupational health and safety and other concerns.