

Star Health Position Paper - Sex Work Legislation in Victoria June 2020

Position

Star Health supports the full decriminalisation of all forms of sex work in Victoria. This is based on evidence that decriminalisation results in the best health and social outcomes of all models of sex work regulation, and that there are positive flow-on effects for the broader community.

Star Health is a leading not for profit provider of community health services in Victoria. Star Health has developed this position on sex work based on: our experience as providers of the Resourcing Health and Education in the Sex Industry (RhED) program; the state-wide health promotion program for the sex industry; our engagement with aligned sex worker and human rights groups, and contemporary research.

Star Health uses the term sex work only in regard to consensual exchanges between adults.

Context

Since the introduction of the Victorian Sex Work Act (1994) very few changes have been made to sex work legislation despite significant advances in healthcare, policy changes, greater human rights awareness and occupational health and safety practices. Current legislation does not: support the health and wellbeing of sex workers; align with contemporary occupational health and safety guidelines; enable best business practice, nor does it uphold human rights and anti-discrimination standards. Amnesty International and sex worker advocacy groups, such as Scarlet Alliance, support the full decriminalisation of sex work.

Sex work is a politically and socially contentious issue and this can be an obstacle to pragmatic law and policy making processes. Star Health recognises the strength of evidence supporting an approach that: maximises the health and well-being of sex workers; their safety and working conditions; offers freedom of choice; protects the fundamental human rights of sex workers, and supports a legal environment that is consistent with these priorities.

Our position on sex work law reform is founded on the following principles:

Principles

- Sex work is a legitimate occupation
- The primacy of health, safety, workplace rights and the workplace responsibilities of those who work as sex workers
- Sex workers are part of the community
- Harm reduction
- The fundamental human right to choose employment and to freely pursue economic, social and cultural development as it applies to both providers and consumers of sex work
- Recognition of the legal and administrative framework that governs all citizens (OH&S, public health, taxation, crime) inclusive of sex workers, outside of the SWA (1994)
- Understanding that the criminalisation of sex work drives it underground and exposes those involved to unnecessary harms

Benefits

Star Health believes that decriminalisation would produce the following benefits:

- Achieve a reduction in stigma associated with sex work affecting individual freedom and long-term plans and goals and impacting the health and wellbeing of sex workers. Support sex workers' right of self-determination to freely determine their political status and freely pursue their economic, social and cultural development, and their rights to security of person, housing and health.¹
- Increase safety for sex workers as a result of having legitimate, and therefore safer and more secure, working environments.²
- Enable crimes committed against sex workers, including acts of violence to be reported more freely by removing the barrier of workers needing to disclose their potentially illegal work. Relationship with police will improve as police are no longer the regulators of the industry.
- Provide a harm reduction approach by improving the safety of the environment in which sex work occurs and supporting the choices of sex workers to either remain in or leave the industry.³
- Empower sex workers to speak more openly about issues they face as well as providing them better access to and support from police and other positive outcomes related to free agency.⁴ This will provide a benefit to their overall well-being.
- Support individual peer advocacy in the sex work industry by enabling peer-led initiatives which empower and include the experiences of sex workers.⁵
- Allow the belief that sex work attracts criminal activity to be challenged. Research demonstrates that residents' perceptions of brothels in their area are neutral.⁶
- Enable workers to choose to disclose their work to other agencies including medical, drug and alcohol, mental health, housing and financial institutions without fear of incrimination thereby improving access to vital services and facilities, as well as providing greater access to other specialist services. This will impact positively their health and well-being.
- Provide greater safety to those who participate in street sex work, by enabling a greater focus on safety and amenity rather than enforcement.
- Benefit the broader community through increased incidence of sex workers reporting violent offenders and by reducing stigma for clients.
- Provide greater freedom to access protections under laws governing OH&S, public health and crime.

Recommendations

Star Health recommends that:

- The Victorian Sex Work Act (1994) be repealed, along with other discriminatory laws against sex workers.
- Decriminalisation creates an environment wherein sex workers have control over their work including the ability of individual sex workers to own and run independent businesses without additional registration or licensing requirements. That the same and existing regulatory processes for all businesses should be sufficient for the sex industry. This also means sex workers will benefit from the protections offered by these same business regulations.
- The purchase of sex not be an offence. It is seen as an offence in European legal frameworks such as the Nordic model. Star Health does not support this.

- The process of decriminalisation includes acknowledgement and promotion of existing legislation and regulation to govern workplace health and safety, public health and crime.
- A comprehensive suite of services be resourced to support implementation of changes impacting sex workers including health promotion, awareness and stigma reduction.

Evidence

Alignment with Amnesty International, Scarlet Alliance and Sex Work Law Reform Victoria

Star Health supports the position of Amnesty International (2016), which calls for:

“the decriminalization of all aspects of adult consensual sex work due to the foreseeable barriers that criminalization creates to the realization of the human rights of sex workers. ... Amnesty International considers that to protect the rights of sex workers, it is necessary not only to repeal laws which criminalize the sale of sex, but also to repeal those which make the buying of sex from consenting adults or the organization of sex work ... a criminal offence. Such laws force sex workers to operate covertly in ways that compromise their safety, prohibit actions that sex workers take to maximize their safety, and serve to deny sex workers support or protection from government officials. They therefore undermine a range of sex workers’ human rights, including their rights to security of person, housing and health.”⁷

Star Health defers to sex worker led organisations and their papers on decriminalisation, including Scarlet Alliance, *Principals for Model Sex Work Legislation (2013)*⁸, and Sex Work Law Reform Victoria, *What is Full Decriminalisation of Sex Work? (2020)*.⁹

OH&S and public health can be protected without criminalisation

Decriminalisation would enable the application of regulation through other occupational means such as workplace occupational health and safety and public health practices. Star Health accepts that:

“Legislation that recognises sex work as a legitimate occupation affords sex workers better control over our working rights and conditions, improves [their] abilities to implement safer sex practices, enhances opportunities for collective bargaining and industrial advocacy (for holiday pay, sick leave, superannuation, parental leave, industrial award coverage), recognises contracts made for working purposes (between sex worker and client, or in the hiring of premises, drivers or security), legitimises income (paying taxes, claiming work-incurred expenses and applying for loans), and gives sex workers better legal redress for unfair dismissal and other injustices in the workplace.”¹⁰

Criminalisation increases stigma, limits freedom and causes harm

The current Sex Work Act and accompanying regulations have negatively impacted sex workers both directly and indirectly. Sex workers identify many areas that impact their work, health and well-being, including stigma and discrimination. The way the industry is regulated is burdensome; this causes unwarranted stresses and may harm the mental health of sex workers. It also places their safety at risk. More needs to be done to support the rights of sex workers. Decriminalisation will help to protect their human rights.

“Criminalisation makes it difficult for sex workers to access remedies, enforce contracts or lobby for better working conditions because of fear of prosecution.”¹¹

Any model of sex work legislation in Victoria needs to be based on the principle that sex workers are a part of the community and that attempting to restrict sex work will not eliminate it. Globally, many rights violations, including physical and sexual violence against sex workers by police and other state groups, are the result of climates of impunity.¹²

Community

Maintaining the health and human rights of all sex workers will benefit all community members. Allowing local councils to apply planning controls for sex service premises gives both councils and the community an opportunity to consider the scale and potential impact of each premises. This will reduce the number of non-compliant sex industry premises, by providing sex industry businesses with fair and equitable local planning provisions that are consistently applied.

Decriminalisation will allow acts of violence to be reported more freely by removing the barrier of workers needing to disclose illegal work. In 2015 Adrian Bayley raped five sex workers before raping and murdering Jill Meagher. Multiple sex workers identified Bayley as their attacker, however some did not trust police enough to give evidence. It is reported that others did report it to the police and received convictions, however Bayley was released on bail. It is important to note that when sex workers do go to the police, evidence demonstrates that perpetrators against sex workers tend to get lesser sentences and only recently were the sentencing guidelines amended so as not to condone explicit discrimination against sex workers.

Mainstream regulation of legitimate business reduces harm

Decriminalising the sex industry in Victoria would resolve many of the issues faced in the ongoing management and regulation of sex work. Those unregulated areas of the sex industry (such as street sex work, unregulated massage parlours and some internet-based sex workers) would benefit by no longer being criminalised, as well as benefitting from a reduction in those harms listed above, which apply to the current regulated part of the industry.

Criminalisation makes it difficult for sex industry businesses to develop and enforce OHS standards, and for sex workers to access statutory employment protections, industrial awards and workers compensation.”¹³

Research indicates the positive consequences of decriminalisation

Research in New Zealand [which decriminalised sex work in 2003] has shown that “over 90% of sex workers are [more] aware of their legal rights and employment rights and many are arguing that this has given them increased confidence in their interactions with clients.”¹⁴ A research paper from Christchurch’s university of Otago that concluded that, “There is little or no evidence that there have been negative consequences for the health and safety of sex workers post-decriminalisation.”¹⁵

Harm reduction model

A harm reduction approach to sex work minimises potential negative impacts of the sex industry on the community and enables sex workers to gain greater control over their occupation. Respecting an individual’s right to choose their employment and enabling them to work in the safest way possible minimises possible harms. It reduces the need for sex workers to take unnecessary risks to undertake sex work. It also allows them to have control over their own employment.

The harm reduction approach has served the health of the Victorian community well in the context of the prevention of HIV transmission. Through this approach, HIV transmission in the sex industry has been prevented from being a problem in Australia.¹⁶ The same approach should be applied to other aspects of the sex industry.

The right to self determination

Scarlet Alliance (2014) have summarised the need for decriminalisation in the context of fundamental human rights: *“the right to self-determination is protected by Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These treaties state that ‘all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.’¹⁷ Ongoing stigma, social exclusion, criminalisation and discrimination mean that sex workers are unable to freely pursue [their] economic, social and cultural development.”¹⁸*

Legislation & Regulation

Sex Work in Victoria is currently regulated by:

- The Sex Work Act (SWA) (1994)¹⁹
- Sex Work Regulations (2016)²⁰
- Public Health and Wellbeing Act 2008²¹
- The *Crimes Act (1958)*, the *Summary Offences Act 1996* and various other Commonwealth laws relating to sexual slavery, immigration and trafficking²²

The SWA (1994) contains conditions and penalties relating to illegal, or unregulated, brothels. However, insufficient attention has been given to the consequences of increases to the licensing requirements which has resulted in a growing unregulated industry. People who are unable to meet the current licensing requirements become part of the unregulated sex industry. The unregulated industry includes massage parlours where sexual services are provided, any private sex worker who works without an exemption number, private sex workers who work from home and street-based sex workers.

Many aspects of the SWA (1994) and the Sex Work Regulations suggest a position of respect for sex work and sex workers. Under current legislation it is illegal to force an individual into, or to remain in, sex work. It is also illegal to force a person to provide financial support using money earned doing sex work. It is an offence to intentionally intimidate, insult or harass a sex worker. Sex workers, under any circumstances, are permitted to refuse service to a client or cease service to a client under this legislation. Star Health supports these intentions of current sex industry legislation in Victoria. However, these aspects of the Act are already contained within other legislation, including sexual assault legislation and public health legislation.

Star Health rejects the approach to sex work regulation, known as the *Nordic Model*, which originated in Sweden in the late 1990s and has since been adopted by other countries. The *Nordic Model’s intention is to criminalise paying for sex but not to criminalise the sex worker*. In this model buying sex and keeping a brothel are against the law. It however, in some countries this has resulted in the privacy of sex workers being invaded and their safety being compromised.

There has been a push for Australia to adopt this model in recent years. Star Health rejects this approach. Currently in Victoria it is illegal for clients to solicit sex in a public place while commercial sex is not illegal. This approach does not explicitly take punitive action against sex workers, but it does make purchasing sex a criminal offence. The Nordic model's stated aim is to decriminalise those who engage in sex work and to provide support services to help them exit. In so doing it both takes a moral stand point on sex work and unnecessarily criminalises those who use the services of sex workers, puts their health and safety at risk and impinges their human rights.

“Key research findings have demonstrated that under the Nordic model, sex workers experience substantial difficulties and dangers when selling sex, and face human rights violations as a direct result of this legislative mechanism.²³ An Amnesty International report on Norway cited forced eviction, deportation, and the increasing abuse of sex workers from both police and clients as a direct impact of this policy.”²⁴

However, as has been found in other attempts at prohibition, sex work is driven underground under the Nordic Model of legislation. The legislation creates a context for sex workers to become vulnerable to several risks such as: not being able to screen their clients, the ability to negotiate condom use, and increased discrimination from health and support services and from the community. More importantly, it also risks the physical and emotional safety of the sex worker.

Research from the Canadian HIV/AIDS Legal Network, Sex Work Law Reform in Canada (2013) found that criminalising clients drives sex workers to more isolated locations.²⁵ This causes informal support networks to weaken, making it more difficult for sex workers to warn each other about people who are abusive or violent. Clients are less likely to report violence they have witnessed, fearing it could lead to their own arrest.

Human trafficking is often referenced as a reason to legislate the sex industry. However, human trafficking is addressed under established federal laws not connected to sex work legislation. Star Health supports these laws and if RhED suspected a sex worker had been trafficked, RhED would support the worker and notify the authorities. Sex Work Law Reform Victoria refer to the Australian Federal Police data on their website which shows two convictions over an eleven-year period suggesting that human trafficking is not widespread in the sex industry in Victoria.²⁶

Concluding Statement

The health and wellbeing of Victorians working in the sex industry would benefit from full decriminalisation. There is already legislation that governs specific occupational health and safety issues and other concerns. Sex workers are protected by the same laws that protect the community and do not need separate laws to govern their lives or their transactions. The whole of the sex industry is subject to criminal, taxation, migration, labour and health legislation.

- ¹ Amnesty International: [Policy on State Obligations to respect, protect and fulfil the human rights of sex workers](#)
- ² University of Otago: [The Impact of the Prostitution Reform Act on the health and safety practices of sex workers, by G. Abel, L Fitzgerald, C. Brunton](#)
- ³ Scarlet Alliance: [A Guide to Best Practice - Occupational Health and Safety in the Australian Sex Industry, compiled by D Edler](#)
- ⁴ The New Zealand Sex Workers' Collective: [The New Zealand Model](#)
- ⁵ The New Zealand Sex Workers' Collective: [The New Zealand Model](#)
- ⁶ The University of Technology Sydney Law Research Series: [New Zealand Geographer - Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use, by J Prior and P Crofts](#)
- ⁷ Amnesty International: [Policy on State Obligations to respect, protect and fulfil the human rights of sex workers](#)
- ⁸ Scarlet Alliance: [Principles for Model Sex Work Legislation](#)
- ⁹ Sex Law Reform Victoria: [Landing Page](#)
- ¹⁰ Scarlet Alliance: [Principles for Model Sex Work Legislation](#)
- ¹¹ Scarlet Alliance: [Principles for Model Sex Work Legislation](#)
- ¹² The Lancet: [An action agenda for HIV and sex workers, by C Beyrer, A Crago, L Bekker, J Butler, K Shannon, D Kerrigan et al.](#)
- ¹³ Scarlet Alliance: [Principles for Model Sex Work Legislation](#)
- ¹⁴ Research Gate: [A decade of decriminalisation: sex work 'down under' but not underground, by G. Abel](#)
- ¹⁵ University of Otago: [The Impact of the Prostitution Reform Act on the health and safety practices of sex workers, by G. Abel, L Fitzgerald, C. Brunton](#)
- ¹⁶ Australian Government, Department of Health: [Eighth National HIV Strategy 2018-2022](#)
- ¹⁷ United Nations Human Rights Office of the High Commissioner: [International Covenant on Civil and Political Rights](#)
- ¹⁸ Scarlet Alliance: [Principles for Model Sex Work Legislation](#)
- ¹⁹ Victorian Current Acts: [The Sex Work Act \(SWA\) \(1994\)](#)
- ²⁰ Victorian Consolidated Regulations: [Sex Work Regulations \(2016\)](#)
- ²¹ Victoria State Government – health.vic: [Public Health and Wellbeing Act 2008](#)
- ²² Research Gate: [Criminalising the purchase of sex, by J Levy](#)
- ²³ The Conversation: [Ideological war against the decriminalisation of sex work risks sidelining much of the evidence, by E Sansers-McDough](#)
- ²⁴ Amnesty International: [The Human Cost of 'Crushing' the Market - Criminalisation of sex work in Norway](#)
- ²⁵ Canadian HIV/AIDS Legal Network: [Sex Work Law Reform in Canada - Considering problems with the Nordic model](#)
- ²⁶ Sex Work Law Reform Victoria: [Human Trafficking in Victoria's Sex Industry](#)