



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

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Ms Leonard,

Vixen Collective is a non-funded organisation run by sex workers volunteering their time and energy in the absence of a funded peer only sex worker organisation in Victoria.

We appreciate this opportunity to contribute to the Access to Justice Review and attach our submission accordingly.

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

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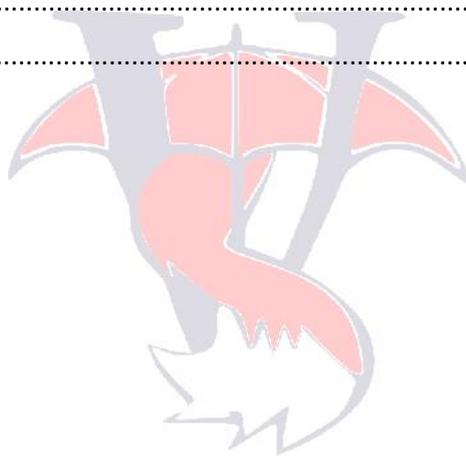
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Vixen Collective - Victoria's peer only sex worker organisation

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

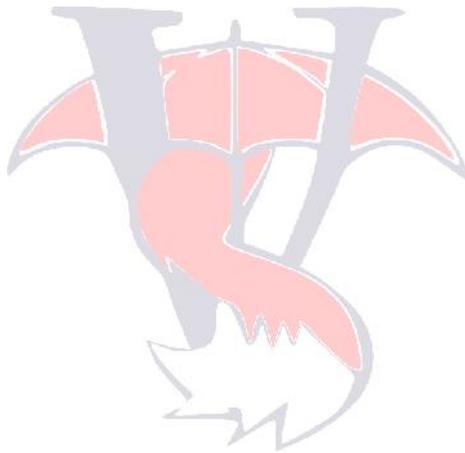
This submission has been produced by Vixen Collective, through ongoing consultation with Victorian sex workers.

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 worker's 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.



Barriers to Accessing Justice for Sex Workers

The Licensing System

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
- 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 workers, 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 Queensland¹, where regulatory regimes have proven to be ineffective in terms of compliance² 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.**"¹³*
- emphasis added

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

¹ [Regulatory Impact Statement for SL 2007 No. 192](#), Queensland Government, 2007, pg 11-12.

² "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.

³ Sex Work (Fees) Regulations 2014, Consumer Affairs Victoria, April 2014, page 5.

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 its 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.*⁴

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

⁴ Sex Work (Fees) Regulations - Regulatory Impact Statement, Consumer Affairs Victoria, April 2014, pg.3.

Stigma and Discrimination Against Sex Workers in Australia

Sex workers face significant stigma and discrimination in Australia. Being identified as a sex worker can have implications, and these implications often result from having sex worker status documented in a number of ways, by example:

- Registration of sex workers via the licensing system in Victoria
- Medical records where sex worker status is recorded due to mandatory STI/HIV testing
- Convictions retained prior to the licensing system, through current street based sex work or due to sex work outside the licensing system
- Interactions with outreach or support services where sex worker status is recorded
- Through 'outing', being exposed as a sex worker either inadvertently or maliciously

Being identified as a sex worker has consequences, in terms of the stigma and discrimination that individual sex workers and sex worker community faces, including but not limited to:

- The 'Leaking' and misuse of personal information on sex workers can lead to stalking, blackmail & extortion
- Sex workers experience increased stigma and discrimination in media
- There are less opportunities for sex workers to utilise remedies to address discrimination
- Being a sex worker may affect the outcome of child custody cases
- There is discrimination in education against sex workers (including the exclusion of sex workers from University Courses on 'morals clauses')
- Sex worker status may affect access to housing and accommodation
- Sex worker status affects employment disputes & future employment opportunities
- Being out or being 'outed' as a sex worker leads to discrimination regarding health insurance

- Sex workers are discriminated against regarding goods and services (including banking and online commerce)
- Sex workers are discriminated against regularly in medical settings (for example refusal and/or exclusion from treatment 'on conscience'⁵)
- Sex workers have been discriminated against in membership of trade unions
- Sex workers experience the implication of 'criminality' that is implied by registration under licensing regimes
- Sex workers have less ability to access police/justice under criminalised and licensing systems
- There is reduced access to health/outreach services for sex workers under criminalisation/licensing systems for regulating sex work
- Police attitudes to sex workers, including corruption and harassment from criminalisation, and entrenched stigma/discrimination from prior criminalisation - affect sex workers' ability to access police and their treatment when sex workers do
- Sex workers experience stigma and discrimination through 'outing', being exposed as a sex worker, this can impact on workers but also on families, partner/s and friends
- It can affect school age and/or older children if a parent or carer is who is a sex worker is 'outed'
- Sex workers may experience interpersonal and/or interfamilial violence when 'outed'
- Sex workers are subject to stalking and harassment from anti sex work groups and their members, including outing to family and in social media
- Sex workers have been barred entry to clubs or hotels
- Lastly, sex workers are often not considered stakeholders in discussions on their own lives, their representative organisations not consulted by government on sex work policy and law

⁵ [Conscientious Objection](#), Australian Medical Association, 28th November 2013.

It is critical when considering working to improve access to justice for sex workers and sex worker community, that the following is considered:

- Systemic barriers to accessing justice, specifically ***the licensing system in Victoria***
- The continuing impact of the police remaining as regulators of the licensing system, specifically that ***sex workers are far less able to reach out to the police for assistance***
- The multiple and complex barriers to accessing justice in the courts, primary amongst which is the ***impact of a person being identified as a sex worker and the opportunities this creates for future stigma and discrimination***

The Role of the Media

Media treatment of both criminal and civil cases involving sex workers is sensationalistic, overwhelmingly whorephobic, often uses stigmatising language – as is typical for much coverage of sex work/ers in Australian media – so much so that media treatment of sex workers itself presents a barrier to sex workers pursuing justice.

The publication in the media of the names, photographs and other personal details of sex workers who are:

- Victims of crime
- Testifying as witnesses in criminal or civil cases
- Pursuing civil cases

All act as significant disincentives to sex workers accessing justice in the courts in Australia. In the case of Dr. Suresh Nair, who was charged with the murder of one sex worker and the manslaughter of another, seven sex workers who testified as witnesses in the case were denied name suppression despite the prosecution stating:

“...identifying them would cost them personally and professionally, and would also discourage other people working in the sex industry from coming forward in future...”⁶

Coverage of criminal cases involving sex workers often involves significant victim blaming and outright vilification. In October 2014 the Courier Mail in covering the death of sex worker and trans woman Mayang Prasetyo,

“...referred to the victim – who is thought to have been killed and dismembered by her husband – as a shemale, a prostitute and a hooker wife. Headlines included: “Monster chef and the shemale”; “Ladyboy and the butcher” and “Killed and cooked trans woman was high-class sex worker”...”⁷

The news outlet sourced provocative pictures of Mayang posing in a bikini from Facebook accounts and used these to illustrate the news story of her murder. More than 22,000 signatures were gathered on a petition circulated by the trans community calling for a public apology, and although the Australian Press Council later found that the Courier Mail was in breach of two members standards, the paper only:

- Published the adjudication, which has since been removed from its website
- An initial statement – not an apology - indicating *“Many believe that yesterday we presented Mayang’s story in a way that was disrespectful to her memory...”*

The language used to refer to sex work and sex workers in Australian media is stigmatising and inappropriate. Although the United Nations⁸ and World Health Organisation⁹ both recommend the use of the terms “sex work” and “sex worker” these terms are often not used at all or are used interchangeably with a selection of derogatory terms including “prostitute” and “prostitution” in media¹⁰.

⁶ [‘Sex and the surgeon: court orders name of prostitutes be revealed’](#), Georgina Robinson, The Sydney Morning Herald, 6th December 2010.

⁷ [‘Mayang Prasetyo killing: ‘disrespectful’ Courier-Mail coverage sparks inquiry’](#), Amanda Meade, The Guardian, 8th October 2014.

⁸ *“Prostitute or prostitution: These words should not be used. ...use terms such as sex work, sex worker...”*, ‘UNAIDS Terminology Guidelines’, October 2011, pg.5.

⁹ *“Sex workers include female, male and transgender adults (18 years of age and above) who receive money or goods in exchange for sexual services”*, ‘Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations’, July 2014, pg.xiii.

¹⁰ [‘Teen prostitute certain she was raped by Adrian Bayley’](#), Mark Russell, The Age, 26th March 2015.

Barriers to Police and Reporting Crime

Under licensing systems, access to police for sex workers is significantly reduced due to the oppositional roles sex workers and police are placed in¹¹. This is particularly acute for sex workers who work outside the licensing system, or whose work may remain criminalised (for example street based sex workers in Victoria).¹²

This affects sex workers' ability to access justice, with consequential flow on effects on individual sex workers and sex worker community safety.

- Where sex work remains criminalised in Victoria (specifically, street based sex work) there are higher barriers to workers approaching police for assistance due to fears caused by:
 - a) prior negative interactions with police
 - b) outstanding fines and/or warrants
 - c) the possibility of being charged for sex work that is still criminalised when reporting a crime¹³
- Sex workers who are non-compliant with the licensing system are often less likely to report crimes against them, because the penalties within the licensing system cause them to have significant concerns around:
 - a) detection by police
 - b) the possibility of being charged for sex work that is outside the licensing system when reporting a crime

¹¹ "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.

¹² Although Victorian police have stated that it is "unlikely" 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. Refer - '[St Kilda sex worker calls out on Red Umbrella Day for more effort to find Tracey Connelly's killer](#)', Bayside Leader, December 18th 2013

¹³ Ibid

- The relationship between police and sex worker community, although improved from the time of full criminalisation of sex work, continues to be informed by this history and to improve requires:
 - a) the full decriminalisation of sex work in Victoria
 - b) the training of Victoria Police (with both incoming recruits and existing members) by peer sex worker organisations
 - c) ongoing communication, consultation and liaison with sex worker community

The fact that at present sex workers are encouraged to report crimes committed against them, to the same police enforcement unit (SICU – the Sex Industry Coordination Unit) that monitors and enforces compliance for the sex industry, shows a fundamental lack of recognition of the role that the licensing system itself plays as a barrier to reporting.

As indicated in the wake of the Adrian Bayley trial - originally jailed for eight years over five attacks on sex workers only to later kill Jill Meagher – there were at least ten other sex workers who identified Bayley as their attacker but ***did not trust police enough to give evidence***.

From the Herald Sun, March 26th 2015:

“Despite a collaborative approach to tackling crime on St Kilda's sex workers – driven by local police and agencies – sex worker Halo said many were still distrustful and felt deterred from reporting violence because of fears they could be charged or harassed on the job.

“Until it's decriminalised, I don't think there can be that real relationship with the police”¹⁴

¹⁴ [‘Adrian Bayley Trials: Street sex workers still reluctant to report crimes’](#), Rania Spooner, The Age, 26th March 2015.

Access to Justice Through the Courts

There are multiple barriers that sex workers face when attempting to access justice through the courts in Australia, in either criminal or civil cases.

As outlined in the section titled 'Barriers to Police and Reporting Crime', sex workers are already systemically disadvantaged in accessing assistance from police and in reporting crimes committed against them. A history of poor relations between sex worker community and police, a regulatory system that continues to place sex workers at risk when reporting crime, along with expectations that crimes against sex workers are taken less seriously, and the likelihood of being stigmatised on the basis of sex worker status, all contribute to a significantly disadvantaged position for sex workers.

The following act as additional barriers, within the court process itself, for sex workers wishing to proceed with both criminal and civil cases:

- Lack of name suppression
- Potential disclosure of a person's status as a sex worker
- Medical or counselling records may be disclosed in court
- Person's work history (as a sex worker) may be treated in court as either, (i) part of their sexual history or, (ii) as relevant to their character
- Person's status as a sex worker may be treated as relevant in sentencing the person who has offended against them
- Identifying information may be published in court records and/or read out in open court
- Identifying information may be published and/or broadcast in media
- Victims in criminal proceedings (including sex workers) are not represented by Counsel and have no formal role outside that of a witness
- Expectation of being treated unfairly, judged and stigmatised on that basis in court
- Media coverage of trials involving sex workers is often highly stigmatising, sometimes vilifying and distressing to both the sex worker involved and sex worker community

- Current sentencing guidelines for Victorian Judges provide non-binding sentencing advice that *"..where the victim of a rape is a prostitute , the victim's sexual experience may be relevant to sentence.."*¹⁵
- History of lower sentences for those that commit crimes against sex workers¹⁶
- The recording of a person's sex worker status in court records and reporting in media may enable further discrimination against them

It has been indicated by sex workers that cases of physical and sexual assault against sex workers are sometimes not proceeded with by prosecutors¹⁷, due to a perception that it is more difficult to gain a conviction against someone who assaults a sex worker.

For greater detail on barriers to accessing justice for sex workers and the issues faced by sex workers when victims of crime, we recommend our submission to the 'Victorian Law Reform Commission – The Role of Victims of Crime in the Criminal Trial Process', 1st February 2016.

Accessible here:

http://www.lawreform.vic.gov.au/sites/default/files/Submission_CP_42_Vixen_Collective_01-02-15.pdf

Civil Remedies

Many of the same barriers face sex workers in accessing justice via civil remedies, as do when sex workers access justice via the criminal courts.

Expectations of being treated unfairly on the basis of being a sex worker apply equally to the civil court system as to the criminal court process.

¹⁵ ['Victorian rape law needs reform to protect sex workers'](#), The Conversation, 30th March 2015.

¹⁶ *"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.

¹⁷ Sex worker consultation on the review of 'Sex Work Regulations 2006', Vixen Collective, 11th April 2015.

Media coverage can be an issue, as in the case of sex worker Madison Ashton who experienced extensive and unfavourable press coverage when pursuing a legal case over her lover Richard Pratt's estate¹⁸.

The cost of self-funding lawyer's fees, lost income due to court appearances and other associated costs can be prohibitive and a barrier to accessing civil remedies in and of itself.



¹⁸ ['Court to decide if prostitute turned billionaire's mistress Madison Ashton can claim stake in Pratt fortune'](#), Liz Burke, News.com.au, 16th February 2015.

Vixen Recommendations

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

- 1) *Recognise that licensing as a regulatory system places significant barriers on sex workers' ability to access police and justice, and that removing the licensing system in Victoria is a necessary step in lowering these barriers.*

We ask that the Victorian Government remove the licensing system and pursue the full decriminalisation of sex work in Victoria.

- 2) *To further reduce barriers in accessing police assistance it is critical that:*
 - *Sex worker's peer representative organisations engage in ongoing training of the Victorian Police (with both incoming recruits and existing members) to improve working relationships with sex workers and sex worker community.*
 - *Victoria Police commit to ongoing communication, consultation and liaison with sex workers and sex worker's peer representative organisations.*

We ask the Victorian Government to commit to an ongoing program of training and consultation between Victoria Police, sex workers and sex worker's peer representative organisations.

- 3) *Lack of access to name suppression can lead to: stigma and discrimination, vilification in the media, harm to community, and presents in itself a significant barrier for victims of crime in proceeding with trial.*

We recommend that the Victorian Government recognise that victims of crime who are sex workers should always have access to name suppression in court.¹⁹

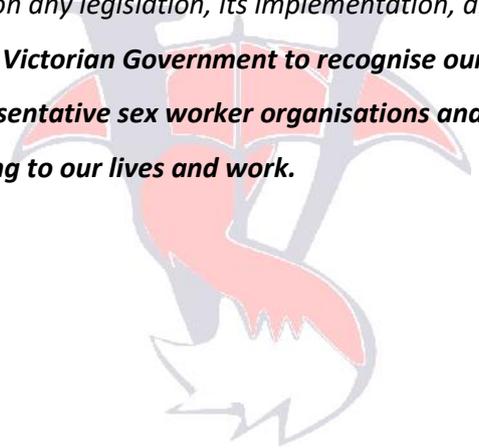
¹⁹ NOTE: Name suppression should apply to all testimony and documentation and should not expire. It should apply within court, including testimony, with sex workers' (whether direct victims' of crime or witnesses) being referred to by pseudonyms if requested.

4) *Sex workers are best able to access information within our own community – through outreach and/or other community engagement - this includes information on accessing justice. At present there is no funded sex worker peer representative organisation in Victoria.*

We call on the Victorian Government to address the lack of a funded sex worker peer representative organisation in Victoria – a peer sex workers service, run by sex workers for sex workers.

5) *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.