



Submission to the Victorian review into decriminalising sex work

Table of Acronyms:

Business Licensing Authority	BLA
Consumer Affairs Victoria	CAV
Equal Opportunity Act (Vic) 2010	EOA
Legal Needs Analysis	LNA
Planning and Environment Act (Vic) 1987	PEA
Prostitutes Collective of Victoria	PCV
Public Health and Wellbeing Act (Vic) 2008	PHWA
Resourcing Health and Education Development in the Sex Industry	RhED (a program of Star Health)
Sex Industry Act (NT) 2019	SIA
Sex Work Act (Vic) 1994	SWA
Sexually Transmitted Infection	STI
Transgender and Gender Diverse	TGD
Transgender Victoria	TGV
Victims of Crime Assistance Tribunal	VOCAT

Executive summary

SKLS has a long history of campaigning for decriminalisation of street based sex work, and particularly of delivering services for street based sex workers in the St Kilda area. Therefore this submission places strong focus on street based sex work, although we note that this represents a small fraction of sex work occurring in Victoria.¹ We encourage government to particularly listen to peer only organisations that can speak from sex workers' lived experience to the comprehensive reforms needed across the sector.

¹ Scott, J. (2017). Technology drives the need to rethink sex industry regulation. *The Conversation*.

We note this submission does not address all aspects of the laws regulating sex work in Victoria that will require change to give effect to decriminalisation. We have focused on some of the key aspects of the system, their interaction with each other, and their impact on our clients and the communities they are part of.

The introduction (P4) to this submission provides a brief history of SKLS's legal representation and advocacy in relation to criminalisation and discrimination experienced by sex workers.

Part 1 (at p7) presents an overview of the current legislative schemes regulating sex work in Victoria, focusing on the direct impact upon our clients, as told to us by our clients, and observed through our case work and advocacy.

Part 2 (at p19) examines intersections between sex work and the LGBTIQ community, particularly the trans and gender diverse community, communities which SKLS serves and connects with through the LGBTIQ legal service and the Roberta Perkins Law Project. Part 2 also examines the specific problems posed for these communities by the current regulatory environment in Victoria.

Part 3 (at p22) delivers SKLS' recommendations to the Victorian government. In brief summary form, these are:

1. Substantially amend or repeal and replace the Sex Work Act (Vic) 1994 to remove its purpose of seeking 'to control sex work', and to remove the licensing and registration system.
2. Identify offences in the in Sex Work Act (Vic) 1994 that duplicate existing criminal offences located in generic criminal laws and repeal these offence provisions.
3. Repeal or qualify the application of section 62 of the Equal Opportunity Act (Vic) 2010 to ensure it does not allow discrimination against sex work service providers that are no longer justifiable post decriminalisation and only protects accommodation providers whose legal and regulatory burdens would genuinely be made too onerous by being unable to lawfully exclude sex work businesses from the premises.
4. Repeal sections 12, 13 and Part 2A of the SWA that criminalise street based sex work offences for both sex workers and clients.
5. Commission a feasibility study and/or needs analysis for a sex work centre in St Kilda.
6. Introduce an expunged conviction scheme for street based sex workers and add expunged sex work convictions to the list of protected attributes in the Equal Opportunity Act (Vic) 2010.

7. Undertake a process to amend the Victoria Planning Provisions to indicate sex work home based businesses that meet planning requirements are exempt from obtaining planning permits similar to other home based businesses.
8. Undertake a process to amend the Victoria Planning Provisions to distinguish between planning requirements for small owner operated and cooperative sex work businesses that are not home-based from larger commercial brothels. Where appropriate consider exemption from the requirement to obtain planning permits.
9. Establish a sex work decriminalisation working group bringing together the Department of Health and Human Services and the Department of Planning and Environment, representatives from community health organisations, and representatives from the sex industry which must include at minimum separate representatives from sex worker peer only organisations.²
10. Consider repealing Division 10 of Part 8 of the Public Health and Wellbeing Act (Vic) 2008, or if it is retained, seeking to integrate its contents with parts of the Act that regulate personal services in a more generic manner. Amend the Act to include a new subsection as follows:

A police officer may not exercise powers or perform functions as an authorised officer under this Act in relation to sex work and sex work businesses.

11. Engage in an assertive strategy of collaboration between the Department of Health and Human Services, relevant community health organisations and peer only organisations such as Vixen Collective to enhance the capacity of current community health programs and to resource additional peer-based public health, sexual health and occupational health and safety programs.
12. Fund sex worker peer-based organisations like Vixen Collective to enable them to participate in developing a peer health and rights promotion strategy and to deliver peer-based education programs both for sex workers and the wider community, and to participate in a decriminalisation government working group and any other community consultation or research processes that may occur.
13. Support the development of participatory and community-led research to understand the needs and specific experiences of LGBTIQ sex workers, and particularly transgender and gender diverse sex workers.

² Vixen Collective is Victoria's peer only sex worker organisation that is accredited as a full member of the Scarlet Alliance.

Introduction: SKLS' sex work related services and advocacy

St Kilda Legal Service (SKLS), established in 1973 as the St Kilda Free Legal Service, was an early frontrunner of the community legal sector in Victoria.

From the time of the Neave inquiry into prostitution³, conducted in 1984, producing a final report in 1985, and leading to the first wave of legislation that sought to legalise and regulate the sex industry, SKLS became a contributor to campaigns for decriminalisation of street based sex work. This excerpt of the SKLS 1985/86 SKLS annual report⁴ recalls:

A submission was made to the recent government inquiry into prostitution and legal service workers attended several local meetings on the issue. Our submission argued for decriminalisation of prostitution. The Womens Legal Resources Group and the Australian Prostitutes Collective were the only other groups to call for decriminalisation.

Decriminalisation is particularly important to workers in St Kilda as legalisation of prostitution (as opposed to decriminalisation) will most likely mean the legalisation of brothels only and prohibition of street prostitution.

Legalisation of brothels would mean owners, and the government would take part of the workers earnings, women would not be able to work from their homes or premises they rent; and it will be unlikely workers will be able to gain permits to operate brothels.

Outreach services and further advocacy

In the 1990s SKLS developed a working relationship with the Prostitutes Collective of Victoria (the PCV). SKLS annual reports from the early to mid 1990s suggest that sex workers in the St Kilda area rarely approached mainstream legal services seeking legal assistance, perhaps due in part to fear of being discriminated against by lawyers and other service providers. SKLS worked together with PCV to develop the first pilot outreach program, which was delivered in 1996 in rented St Kilda motel rooms, timed in conjunction with health outreach programs to the same locations. It was noted at the time that poor uptake of the service offering was due to the legal outreach being provided too early in the evening, with SKLS finding it was not feasible to deploy lawyers to work late at night.

SKLS and PCV then moved to focus on distributing written information that could be accessed at any time, and jointly developed a legal information pamphlet printed on condom holders which PCV distributed in the community. SKLS and PCV went on to conduct further outreach pilots throughout the late 1990s, and to also work collaboratively to produce a new legal information resource for sex workers named 'LIP' – Legal Information for Professionals. A further edition of the LIP resource was later published by St Kilda Legal Service in collaboration RhED (Resourcing Health and Education in the sex industry), a

³ Neave, M.A. 1985. Inquiry into Prostitution : Final Report. Melbourne: Government Printer.

⁴ St Kilda Legal Service (1986) Annual Report 1985-86, pp13. A hard copy of this document is held onsite at St Kilda Legal Service.

program of what was then Inner South Community Health Service. More recently, in 2019, SKLS worked with RhED and with Vixen Collective, Victoria's peer only member organisation of the Scarlet Alliance, in producing updated legal information for sex workers.⁵

In 2002 SKLS received Victorian Government Department of Health and Human Services funding for the first time to specifically deliver a 'drug outreach' legal program. In 2003, SKLS received a further grant of funding from the Victorian Department of Health and Human Services which further shaped SKLS' engagement with local street based sex workers. The grant meant that the outreach lawyer could commit a significant proportion of their time to dedicated outreach with sex workers in the local community, and provide a specialist duty lawyer service to Melbourne Magistrates' Court representing individuals charged with offences related to street based sex work. While the specialist list is not currently operating, RhED, SKLS and other legal services continue to support those individuals who come into contact with the criminal justice system, and who continue to be disadvantaged by having historical 'loiter' offences recorded in their prior criminal history.⁶

SKLS advocacy and services to sex workers continued over the years with direct service provision and other examples of community legal education and advocacy. In 2016 SKLS contributed to efforts to have the Victorian Sentencing Manual amended to remove sections which suggested that where rape victims were sex workers, this could potentially be used in a manner to mitigate the gravity of the offending.⁷ SKLS continues to deliver direct outreach legal services to the local sex work community through our partnerships with organisations such as St Kilda Gatehouse and Star Health. A significant proportion of ongoing case work involves Victims of Crime Assistance Tribunal (VOCAT) applications involving street based sex workers who have been subject to physical violence while working.

Establishment of the LGBTIQ Legal Service and Roberta Perkins Law Project The development of SKLS's outreach services and partnerships over time led to greater awareness within SKLS of the specific legal issues and barriers faced by LGBTIQ communities and the trans and gender diverse community, in particular. Thorne Harbour Health (then the Victorian Aids Council) shared similar concerns about the need for specialist and integrated legal services for LGBTIQ communities.

In 2017, SKLS successfully applied for funding from the Victoria Law Foundation to establish the LGBTIQ Legal Service as a health justice partnership with Thorne Harbour Health and Victoria's first and only specialist legal service for LGBTIQ communities.⁸ The two-year pilot

⁵ <http://www.skls.org.au/legal-help/sex-work/legal-information-for-professionals/>

⁶ Section 13 of the SWA establishes the criminal offence of loitering for the purpose of sex work and offences of this kind, as well as those that involve clients loitering (see section 12 of the SWA), are often abbreviated to be termed 'loiter' offences.

⁷ For a description of those sections and the case law they were based on see Hiscock, R. Victorian rape law needs reform to protect sex workers. 2015. The Conversation. Accessed online at <https://theconversation.com/victorian-rape-law-needs-reform-to-protect-sex-workers-39460>.

⁸ www.lgbtiqlegalservice.org.au

project commenced in 2018 and included the delivery of integrated legal services with Thorne Harbour Health therapeutic programs, the production of the LGBTIQ+ Inclusive Practice Toolkit for legal professionals and a statewide LGBTIQ legal needs analysis report (due for publication in late July 2020).

In 2019, SKLS further developed its approach to specialist legal service programs for LGBTIQ communities by establishing the Roberta Perkins Law Project in partnership with Transgender Victoria, with funding from the City of Melbourne Social Innovations Partnerships program. 'Soft-launched' in September 2019, the project established a specialist legal service program for trans and gender diverse people in Victoria as a two-year pilot. The service was formally launched in mid 2020 as the Roberta Perkins Law Project, named in honour of Roberta Perkins.

Roberta Perkins was a transgender woman who worked tirelessly in advocating for the rights of transgender people and sex workers. She was an eminent scholar producing ground-breaking sociological research on the lives of trans women sex workers in Sydney's King's Cross and across Australia more broadly. She was a founding member of the Australian Prostitutes' Collective, referred to earlier as, alongside SKLS, one of the few organisations across Australia that advocated strongly for decriminalisation of street based sex work during the Neave inquiry.

While it appears cis gender women have historically and still tend to make up the majority of street based sex workers⁹, trans and gender diverse individuals have also historically been involved in street based sex work in general, and in St Kilda area in particular, for many years and for a number of reasons.¹⁰ SKLS service users who are or have been sex workers include but are by no means limited to transgender women, cisgender women, people who identify as non binary and people who identify as members of the LGBTIQ+ community more broadly.

It is through our experience in providing outreach and specialist legal services to LGBTIQ communities that SKLS considers Victoria's current regulation and criminalisation of sex work has a particular and disproportionate impact on members of LGBTIQ communities who are sex workers or who have engaged in sex work. The decriminalisation of sex work presents an important opportunity for Victoria to promote greater inclusion and equality for LGBTIQ communities, as we will outline in client case studies, community feedback and research in Part 2.

⁹ See Durant, B. L. (2015). *Survival stripped bare: an ethnography of street sex workers in Dandenong*, 29.

¹⁰ See Rowe, J. (2006). Street walking blues: Sex work, St Kilda and the street. *Street Walking Blues: Sex Work, St Kilda and the Street*, 183.

Part 1: Legislation regulating Sex Work in Victoria

The current legislative regime in Victoria permits sex work to occur in certain settings, and is effectively a system of licensing and registration. Sex work undertaken in a manner non-compliant with these requirements can attract criminal prosecution and penalties.

The primary piece of legislation regulating sex work in Victoria is the Sex Work Act (Vic) 1994 (the SWA) and its subordinate legislation, the Sex Work Regulations (Vic) 1994 which have been updated several times. Of note is that the SWA's stated purpose is to 'seek to control sex work in Victoria'¹¹.

This purpose draws on historical vice, vagrancy and 'prostitution control' related laws that reflect a specific moral underpinning rather than an evidence based approach to achieving transparent, inclusive, non-discriminatory and pragmatic public policy aims. That this is the stated purpose of the SWA presents fundamental questions about the suitability of its design for achieving improved public health and human rights outcomes for sex workers and the general community.

This is also one reason why serious offences¹²s such as those involving child exploitation should not sit within the SWA. Locating such incredibly serious offences within an Act that is intended to 'control sex work' implies the seriousness of those offences is somehow linked to a connection with sex work, rather than the fact that crimes of exploitation, coercion and sexual offending (particularly against children) are objectively extremely serious in and of themselves. Several of these offences in the SWA, if not all, duplicate existing criminal law contained in the Crimes Act (Vic) 1958 and the Crimes Act (Cth) 1914. All SWA offences which duplicate existing criminal law should be repealed and any that do not should be relocated to generic criminal legislation. SKLS has not had the opportunity to systematically identify each relevant provision and the commensurate duplicate provision, but other submissions to this review are likely to have done so.

Other relevant legislation includes but is not limited to the Public Health and Wellbeing Act (Vic) 2008 and its subordinate legislation and the Planning and Environment Act (Vic) 1987 and planning provisions and schemes created under it. The impacts of these are addressed briefly following an initial discussion of the SWA.

The Sex Work Act (Vic) 1994 – structure and impact on SKLS clients

The SWA divides the Victorian sex work sector and sex work businesses up into subcategories with their own regulatory requirements, the contravention of which constitutes various offences. These are broadly separated into brothels and escort agencies; sole operators of sex work services; and street based sex work or solicitation. Additionally

¹¹ Section 3, SWA.

¹² We refer to the offence provisions of the SWA contained in Part 2, specifically sections 5 to 11A.

the SWA and its subordinate legislation seeks to broadly regulate the advertising of all forms of sex work.

Brothels and escort agencies:

Brothels and escort agencies that employ sex workers must be licensed¹³ by the Business Licensing Authority, which sits within Consumer Affairs Victoria, in accordance with the SWA's subordinate legislation.

Licensing is a complex and expensive process that is reportedly challenging to navigate. Many brothels and escort agencies in Victoria are reportedly not licensed¹⁴, which means, according to some sources, that a significant number of sex workers in Victoria are working in non-compliant workplaces.

Those who work in non-compliant workplaces are at risk of criminal prosecution. Section 10 of the SWA which prohibits any person from profiting from sex work conducted outside the licensing system combined with an explicit offence for being present on the premises of an unlicensed brothel in section 15 of the SWA, places workers at risk of prosecution when working in non-compliant work places.

This places sex workers in non-compliant workplaces in a position where they are more susceptible to workplace exploitation. Their capacity to organise, advocate, or seek help to improve their work conditions or immediate health and safety is undermined by legal precarity.

This state of uncertainty also creates a strong motivation to avoid contact with police, even where their assistance may be needed, particularly as police are a primary enforcement agency for the current scheme. This precarious position, as well as continued stigma and discrimination, also impacts sex workers' ability to have open and meaningful engagement with health and other needed community services.

Case study: SKLS acted for a client who was experiencing homelessness and had been staying at the brothel where they worked. While working in an unlicensed brothel, management sought to control the movement and free time of sex workers, and discouraged them from leaving the premises. Our client was told if they went out, they would be fired effective immediately and not allowed back in again, even to get their

¹³ Section 22, SWA.

¹⁴ This is widely reported by those in the sex industry, although there is a lack of available evidence for this observation, presumably due to the clandestine nature of unlicensed operations. See Sex Workers Voices Project. 2020. Decriminalising sex work in Victoria – background paper. Accessed online at <https://4dmqy8158boh3glp8i1ch75g-wpengine.netdna-ssl.com/wp-content/uploads/2020/06/Sex-Workers-Voices-VIC-Background-Paper.pdf>. See also Scarlet Alliance and Vixen Collective. 2020. Information for the Review into Decriminalisation of Sex Work.

belongings. They were afraid to complain or raise concerns about safety and wellbeing as they believed they would be kicked out and made homeless, or subject to police attention for working in an unlicensed brothel. The client approached SKLS for assistance with legal issues connected with the client experiencing primary homelessness after leaving the brothel.

Specific experiences of trans and gender diverse individuals in the sex industry, and particularly in the brothel sector, are explored in further detail in Part 2 of this submission.

Sole operators of sex work services:

Sole operators of small owner operated sex work service businesses are exempt from obtaining a license¹⁵, however they must be registered¹⁶ with the Business Licensing Authority within Consumer Affairs Victoria (CAV) using their legal names and identification, which are permanently retained. While the register is maintained by CAV, it is accessible to various government officials, such as officers of local councils and to those of the rank of or above Sergeant within Victoria Police.¹⁷ The SWA does not appear to specify for what purposes officials are permitted to access the register, nor does subordinate legislation.

It is unclear to SKLS what the practical purpose of the register is and this is not made clear in the SWA or in subordinate legislation, beyond the SWA's overriding purpose, which is stated bluntly as 'to seek to control sex work in Victoria'.¹⁸ It is notable that the SWA predates the Charter of Human Rights and Responsibilities Act (Vic) 2006 (the Charter) and therefore was not required to have its compatibility with charter-protected human rights (such as the right to privacy¹⁹) considered by the Victorian Parliament in the manner required of post-Charter legislation.²⁰

The SWA places onerous restrictions upon how sole operators of sex work services can work and where and does not permit small cooperative formations of sex workers that involve more than two people from being exempt from obtaining a brothel license. For a private sex worker to work from their home, they must go through registration with the BLA using their legal name and home address, and obtain a planning permit from the council. In rented premises, the landlord must be made aware of this and approve of it. There are clearly multiple practical barriers to working from home in compliance with the law, and multiple points at which the process necessitates sacrificing the worker's privacy and potentially even their personal safety. The alternative is to work non-compliantly.

¹⁵ Section 23, SWA.

¹⁶ Section 23, SWA

¹⁷ Section 24(3), SWA.

¹⁸ Section 1, SWA.

¹⁹ Section 13, Charter of Human Rights and Responsibilities Act (Vic) 2006.

²⁰ Section 28, Charter of Human Rights and Responsibilities Act (Vic) 2006.

Case study: SKLS represented a client who performed sexual services work from home without being licensed or registered. Non-compliance with the SWA meant they did not feel safe to call 000 if harmed or placed in danger while working. The client calculated that they could best manage risk by working in familiar surroundings at home, and felt safer as well as less subject to exploitation while working for themselves than as a managed employee. Our client told us:

often most massage parlours aren't licensed and girls work with the same fear [of prosecution] so might as well do it from home and not be treated like shit by a manager.

SKLS assisted the client with multiple legal issues, one of which was tenancy. The client's landlord had engaged in multiple breaches of landlord duties in relation to the tenancy, however the client was terrified that the landlord would discover them working from home, and therefore was not able to advocate effectively for their rights as a tenant to a safe home in a reasonable state of repair.

Street based sex work:

SKLS client feedback: *'Street work is a literal safety net for women.... It is the least exploitative form of sex work for me.'*

Current landscape in Victoria

Street based sex work is non-compliant with the licensing and registration system in place under the SWA and attracts criminal sanctions ranging from fines to imprisonment.²¹ In practice, statistics reveal that in recent years the relevant offences are very rarely prosecuted,²² and street based sex work itself has diminished significantly due to other means of organising sex work, particularly through online platforms.²³

Decriminalisation as a safety strategy

Whatever the local policy settings may be with regard to enforcement, the fact remains that street based sex work is subject to criminalising legislation and is widely perceived in the community to be unlawful. Therefore, apart from direct prosecutions, all the other surrounding negative impacts of criminalisation remain. Street based sex workers and clients are stigmatised and are fearful of police. SKLS believes this would be compounded where street based workers may face other forms of systemic discrimination in addition to sex working, such as racism and transphobia. It is also a compounding source of exclusion and marginalisation for those who are already criminalised due to substance use.

²¹ Section 12 and 13 of the SWA provide numerous offences related to street based sex work targeting sex workers and their clients respectively.

²² Tomazin, F. (2019). 'Off the streets and on the net: solicitation charges dwindle as sex workers shift online' The Age, 30 November 2019 accessed at <https://www.theage.com.au/national/victoria/off-the-streets-and-on-the-net-solicitation-charges-dwindle-as-sex-workers-shift-online-20191130-p53fnw.html#comments>

²³ Ibid.

Wariness of law enforcement means street based sex workers' ability to screen prospective clients for safety reasons and to negotiate terms and conditions is impeded. There is evidence in social research for these arguments, but they are also strongly reflected back to SKLS through case work and conversations with our clients.²⁴

SKLS client interview notes: As a trans woman, our client feels it's particularly important for her to get to have an initial chat and negotiation with the client as she uses this process to assess the safety of the job for her, in general and in terms of potential issues with violence motivated by transphobia. But the current state of affairs makes appropriate screening discussions difficult, as clients are rushed, nervous, looking out for police driving around. The client says it would really help her and make her much safer if street work was fully decriminalised for workers and clients.

The way police officers are likely to perceive street based sex workers (as people operating outside the law) may impact upon how they respond to sex workers as victims or witnesses of serious crimes, whether consciously or not. Indeed, clients of SKLS have made it clear on numerous occasions they would not feel comfortable reporting matters to police where they have been victimised, not only for fear of prosecution, but of having their privacy seriously breached by being 'outed' (specifically as a sex worker) in the course of participating in a criminal investigation, or of not being taken seriously or victim-blamed. Some have expressed that this has already happened to them in traumatic ways, and therefore they would never again consider reporting matters to police.²⁵

[Edited version of a case study from SKLS' 2016 Annual Report]

Anna's Case

Anna was a woman who came to our service after being assaulted by a client when she was working as a [street based] sex worker. One evening a man picked her up and they briefly discussed her services and fees. Anna agreed to intercourse with the client. The client took Anna to his home where, after they engaged in intercourse, he proceeded to strangle her. Anna was terrified that she was going to be killed and left as soon as possible without being paid. Anna reported the assault to police, worried that he might attack other workers. Police investigated the incident but ultimately the man was not charged. Despite a prosecution not proceeding, our service pursued a Victims of Crime Application on behalf of Anna and were successful in satisfying the Tribunal that, on the balance of probabilities, a criminal act of

²⁴ See Armstrong, L. (2014). Screening clients in a decriminalised street-based sex industry: Insights into the experiences of New Zealand sex workers. *Australian & New Zealand Journal of Criminology*, 47(2), 207-222; Armstrong, L. (2017). From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry. *British Journal of Criminology*, 57(3), 570-588.

²⁵ This is a familiar story for those who followed the cases involving Jill Meagher's murderer, who had also raped sex workers in St Kilda prior to killing Ms Meagher. For some in the sex work community, the reporting of this was utterly dehumanising – where sex workers' inability to report terrifying assaults against them seemed to only be considered a serious issue in the context of the subsequent murder of a non sex-working woman.

violence did occur. A hearing was scheduled to consider the issue of whether Anna was the victim of an assault or indecent assault. Before the hearing Anna decided that she did not want to continue with the indecent assault application because of the stress involved, and accepted compensation on the basis that she was the victim of an assault.

After the resolution of Anna's case, SKLS were informed that another sex worker was attacked by the same perpetrator.. SKLS ultimately learned that the perpetrator was eventually charged for the subsequent offending.

SKLS notes the importance of initiatives such as Ugly Mugs²⁶, delivered in Victoria by RhED, in this context, as a vital means of communication in the community alerting sex workers to be aware of dangerous or violent clients. It is essential that in a post decriminalisation context, initiatives like Ugly Mugs are maintained and supported to expand capacity to respond to sex workers needing to report incidents and seek support in the aftermath.

SKLS notes that the reasons some people may feel unable to trust police are complex and intersecting, and that repealing criminal laws applying to sex work alone will not eliminate those barriers. However even for sex workers who experience complex intersecting forms of discrimination, it is an important step that can remove one source of stigma and injustice from the heavy load carried by those members of the community. As a further measure to address the stigma brought about by criminalisation of street based sex work, SKLS also supports the introduction of an expunged conviction scheme for street based sex work related convictions/findings of guilt.²⁷

We can not only observe the negative impacts of criminalisation, but also note there is evidence of positive impacts from decriminalisation. Evidence regarding New Zealand's experience with the full decriminalisation of street based sex work has demonstrated concrete improvements in street based sex workers' ability to conduct screening of clients²⁸, and in sex workers across all sectors feeling confident to safely refuse clients²⁹ in the post-decriminalisation context. Qualitative research conducted in New Zealand also demonstrates improved relationships between street based sex workers and local police.³⁰

²⁶ Ugly Mugs is a program that was initiated in Victoria in 1986 by the Prostitutes Collective of Victoria (PCV), however many sex worker organisations both nationally and globally have adopted the program as a violence prevention program for sex workers. This information was accessed on the National Ugly Mugs(Australia) website. Accessed Online at <https://uglymugs.org/um/about/>.

²⁷ We recommend similar reforms to those undertaken in relation to 'homosexual' convictions in 2015 via the Sentencing Amendment (Historical Homosexual Convictions Expungement) Act (Vic) 2014 (No. 81 of 2014).

²⁸ Armstrong, L. (2014). Screening clients in a decriminalised street-based sex industry: Insights into the experiences of New Zealand sex workers. *Australian & New Zealand Journal of Criminology*, 47(2), 207-222.

²⁹ Self reported improvement in confidence to safely refuse particular clients, for reasons such as the client not wishing to use a condom, was noted in two thirds of participants in a large sample of sex workers from across all sectors of the sex industry in NZ post decriminalisation, not just street based sex work. See Abel, G., Fitzgerald, L. and Brunton, C. (2007), *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers*. Department of Public Health and General Practice, University of Otago, 116.

³⁰ Armstrong, L. (2017). From law enforcement to protection? Interactions between sex workers and police in a decriminalized street-based sex industry. *British Journal of Criminology*, 57(3), 570-588.

Further enhancing safety and amenity post decriminalisation

There is evidence that street based sex workers have more often had adverse experiences involving threats to their personal safety than sex workers in other contexts.³¹ Inherently, street based sex workers are placed at a disadvantage and their situation made potentially unsafe by needing to go to darkened or secluded spaces, or into the car of a client, in order to service clients.

This is likely to remain an issue post decriminalisation, particularly for street based sex workers who are homeless (as are the majority of SKLS outreach clients), even if decriminalisation leads to the ability to easily work from home. We also note that even if decriminalisation and anti-discrimination measures are implemented to the degree that sex workers could return to the pre-1994 system of renting and working from inexpensive motel rooms, gentrification in St Kilda has made this impossible. Yet street based sex work continues in the same locations as it has done for decades, and is likely to continue to do so.

There will continue to be people doing street based sex work who may be homeless, or for many other reasons, street-based work will continue to be the best option. Just one example is that people in family violence situations may rely on sex work outside the home to access income independently, and depend on the flexibility of street based sex work to achieve this.

The safety issues inherent in conducting sex work in secluded public areas will also remain an issue post decriminalisation, because having sex in public view is likely to remain subject to relevant laws such as obscenity offences under Division 2 of the Summary Offences Act (Vic) 1966, necessitating that sexual services are not visibly occurring in public.

SKLS believes safety issues and community amenity concerns could both potentially be addressed by introducing a sex worker centre/sex worker safe house in St Kilda. SKLS encourages the Department of Health and Human Services to conduct a feasibility study and needs analysis for the concept of a sex worker centre, which has been recommended in a previous inquiry.³²

The previous recommendation was made at a time when there were reportedly much higher numbers of individuals street sex working in the St Kilda area, and in turn greater community amenity impacts than are perhaps occurring currently.¹² Therefore the recommendation was shaped in response to those factors, and the current situation is clearly different.

Nevertheless, where SKLS was able to ask a small number of current service users who do street-based sex work, they strongly supported the concept in principal, primarily from a health and safety perspective. We note this was also reportedly the sentiment of street

³¹ Armstrong, L. (2019). Stigma, decriminalisation, and violence against street-based sex workers: Changing the narrative. *Sexualities*, 22(7-8), 1288-1308.

³² See Victoria. 2002. Attorney-General's Street Prostitution Advisory Group Final Report.

based sex workers at the time of the Attorney General's Street Prostitution Advisory Group which first recommended this.³³

SKLS therefore recommends that the Victorian government conduct a feasibility study and needs analysis for the concept of a sex worker centre being established in the City of Port Phillip, that is non-commercially operated and that would meet the following needs:

- A safe indoor location for street based sex workers to service their clients
- Provision of safer sex/personal protective equipment, needle and syringe program, and access to showers and toilets
- A 'back of house' drop in space to access peer support and education, community health services and connections to material support for street based sex workers who may be experiencing homelessness.

SKLS views the concept of a sex worker centre as having the potential to leverage and build upon the positive impacts of decriminalisation, rather than as being an essential component of or prerequisite to decriminalisation. Decriminalisation is a fundamental first step.

SKLS does not recommend the introduction of 'tolerance' zones for street based sex work as in our view, this would reproduce a state of criminalisation outside the nominated zone of 'tolerance' and undermine the purpose of decriminalisation. We note that the notion of a tolerance zone as previously recommended³⁴ in Victoria understandably only refers to tolerance of solicitation on the street – not to tolerance for sexual services occurring in public places, or tolerance of other behaviours that might otherwise be illegal. Similarly in NSW where solicitation is legal outside of prohibited zones near churches, schools and hospitals, part 3 of the Summary Offences Act (NSW) 1988 criminalises 'acts of prostitution' in any public place. This means street based sex workers will still need to find darkened and secluded locations for servicing clients, including in clients' cars, where safety issues remain.

Addressing discrimination

While SKLS hopes and expects that decriminalisation will bring about a cultural shift in how sex workers are perceived, and in their ability to access services and legal redress for exploitation and other harms, this will not happen instantly. Other measures are needed to address the stigma and discrimination faced by sex workers to enhance their personal safety and enjoyment of human rights.

Armstrong has observed³⁵ that physical violence against street based sex workers, the kind SKLS learns of in the course of our legal work, is a direct expression of broader (often misogynistic) contempt for sex workers, which is in part bolstered by criminalisation.

Below are just two measures SKLS recommends to address discrimination, but these are not an exhaustive list of measures that may be needed. Some form of community education is

³³ Ibid.

³⁴ Ibid.

³⁵ Above n.32.

also likely needed, for local government authorities and the community more generally. SKLS has not shaped a specific recommendation to address this need but urges government to consider it.

Expungement

It's important to note there are many people, predominantly women, who will continue to have prior convictions and findings of guilt recorded for street based sex work³⁶ which will appear on any future criminal record check, be brought up every time they have contact with police for any reason (including as a victim or witness in all manner of cases, e.g. family violence), and disclosed in court when that individual may be before the court for completely unrelated reasons. SKLS believes the Victorian Government should consider an expunged conviction scheme for street based sex work, and in fact this could be expanded to all offences connected with being a sex worker. Practically, the experience with homosexual convictions expungements shows that an application process may be needed in order to consider matters on a case by case basis. However, SKLS asks the Victorian government to consider a more automated process for convictions under section 13 of the SWA, that are quite specific to sex workers charged with solicitation in public if this is technically possible to achieve.

Discrimination in accommodation

Another area where specific issues for anti-discrimination measures in statute arise, is section 62 of the Equal Opportunity Act (Vic) 2010 (the 'EOA'). This section allows accommodation providers to lawfully exclude persons who intend to use the accommodation for 'lawful sexual activity on a commercial basis'. As seen in the case study featured on Page 9, the complex of regulation surrounding sex work leads to a devastating experience of housing insecurity for private sex workers, who are not necessarily having any discernible impact on those around them at all. That insecurity is bolstered by legislation permitting accommodation providers such as landlords to directly discriminate against and exclude sex workers.

While SKLS understands that genuine issues surrounding impact on amenity and quiet enjoyment can arise both in the context of residential tenancies, and in commercial accommodation settings like hotels, it is difficult to understand why these issues cannot be dealt with effectively in a generic way by terms of service, terms of tenancy agreements etc, that apply equally to all regardless of their occupation. Post decriminalisation, SKLS understands that the legal and regulatory issues related to licensing and planning may no longer exist, at least in the case of small owner operated sex work businesses, which to date has meant that accommodation providers faced genuine difficulties where guests/tenants were sex working. SKLS recommends repeal or substantial change to s62 of the EOA to reflect a changed landscape post decriminalisation where the instances in which discrimination can be justifiable should be drastically reduced.

³⁶ Generally these are the offence of 'loitering for prostitution' under section 13 of the SWA.

Regulation of sex work advertising

The current Victorian scheme of regulating advertising of sex work prohibits several forms of advertising; and aims to limit both the location and content of advertisements. These regulations attract liability and a range of criminal sanctions when advertisements either; describe the services, encourage employment as a sex worker or use prohibited terms such as “massage”³⁷. The subordinate regulations further impose rules as to the content of advertisements; including the inclusion of registration numbers, restricted forms of advertisement and photography and the qualities of the worker that may be disclosed³⁸.

It is not apparent to us that the advertisement of sex work services in fact requires distinctive regulation from generic advertising standards applicable to all businesses in the community. SKLS lacks sufficient expertise or practice experience in this area to make a specific recommendation on this point, but encourage government to listen to submissions from sex workers and organisations that support them as to the impact of current regulations.

Other laws involved in regulating sex work in Victoria

Planning law

Victorian land use and development is governed by the Planning and Environment Act (Vic) 1987 (PEA), the Victoria Planning Provisions (VPP) which serve to provide a consistent and coordinated framework to local council planning schemes.³⁹ The VPP set out the requirements for home based businesses, as well as brothel premises.

Brothels

The VPP that apply to brothels⁴⁰ are tightly interlinked with and refer back to compliance with the Sex Work Act (Vic) 1994 itself and in particular sections 73 and 74, which outline detailed conditions for the granting of planning permits based on what appears to be a rather confusing combination of both the purposes of the SWA and the PEA. The VPP related to brothels aim ‘to provide consistent planning controls for the establishment and expansion of brothels throughout Victoria coordinated with the provisions of the Sex Work Act 1994.’ This means that ‘a permit for a brothel must include a condition that specifies that the use or development must not commence until a licence is granted under the Sex Work Act 1994.’⁴¹

³⁷ Section 17 SWA.

³⁸ *Sex Work Regulations 2016* (Vic), s11.

³⁹ See s4, pea

⁴⁰ Victoria Planning Provisions 53.03

⁴¹ Victoria Planning Provisions 53.03-1

If decriminalisation in Victoria sees the SWA being substantially amended or repealed, planning provisions and schemes that apply to brothels and sex work generally will need to go back to first principles and be focused upon giving effect to the purposes of the generic principals and purposes of the PEA rather than being focused upon coordination with the SWA.

Amendment of the VPP should seek to give effect to the purposes of the PEA absent discriminatory presumptions about the need to 'control' sex work per se. This process must be informed by evidence and should be compliant with section 38 of the Charter of Human rights and Responsibilities Act (Vic) 2006 which requires public authorities to act in a manner compatible with the Charter.

Home based and small scale owner operated businesses

In general, under the VPP, home based businesses across different planning zones appear to be exempt from obtaining permits provided they comply with the provisions. These include that the premises is the business operator's primary place of residence, and that there are no more than two employees working at the business who do not live on the premises.

In the absence of the SWA in its current form, it is difficult to see why home-based sex work businesses could not also be exempt from obtaining a planning permit, which would protect individual sex workers from being 'outed' in their local area, to their landlord, and spare them what is an onerous process.⁴² It also seems appropriate to consider altering planning requirements for other instances where small scale owner operated sex work businesses are likely to have such a minor presence or impact on their local community that they should not need to be subject to the same requirements as commercial sex businesses on a larger scale involving managed workers. This could include small scale owner operated businesses operating from non-home based premises including 'out calls' or rented premises.

Staff of SKLS have no expertise in planning, nor with respect to the brothel industry more broadly, and so cannot make specific recommendations as to what those provisions should entail. SKLS can only highlight and reinforce what many others have said for decades – the more that a specific regime of legalisation and law enforcement is imposed upon sex work businesses, the more this risks generating a non-compliant 'underclass' of businesses, which negatively impacts workers' autonomy, health and safety through repressing worker organisation and recourse to employment law protections.⁴³

⁴² We note that in the Northern Territory, in the wake of the Sex Industry Act (NT) 2019, which represents a substantial move toward decriminalisation in that jurisdiction, the NT Planning Scheme was amended in accordance with decriminalisation and made clear that home based sex work businesses are to be exempt from obtaining planning permits, like other home based businesses that do not require any special regulation. See Northern Territory Planning Scheme (NT), clause 3.0 (definitions).

⁴³ See Scarlet Alliance. 2014. 'The Principles for Model Sex Work Legislation'. ISBN: 978-0-646-56379-4, pp114-123.

Public health

The Public Health and Wellbeing Act (Vic) 2008 (the PHWA) regulates public health matters related to sex work via Division 10 of Part 8 which imposes specific requirements on brothels and escort agencies, several of which relate to occupational health and safety concerns that overlap with public health, such as hygiene equipment and procedures, medical care, and adequate provision of PPE, such as condoms. The aims of this legislation are appropriate and certainly warranted. It is not clear however whether coercive offence provisions are the best way to achieve these outcomes. We note that police act as the enforcement agency for the Department of Health and Human Services in brothel settings. SKLS believes this approach risks reproducing an 'underclass' of noncompliant businesses as produced by the SWA itself where workers might be silenced or unable to access information and equipment necessary for safer sex and improved occupational health and safety and rights at work. There is good evidence that the best way to achieve optimal public health outcomes involves emphasising peer education and a collaborative rather than coercive relationship with government that involves policing.

In NSW, research has demonstrated the positive health impacts of a collaborative working relationship between the NSW Department of Health and the Sex Worker Outreach Project (SWOP).⁴⁴ This approach functions not in addition to, but *instead* of a compliance based regulatory system for sex work in NSW, and has been considered very successful, with extremely high rates of condom use and low rates of sexually transmitted infection.⁴⁵ Practical and collaborative relationships between government and peer organisations are also the hallmark of the most successful strategies in Australia and elsewhere in combatting the spread of HIV.⁴⁶ SKLS supports a similar public health strategy more generally for the sex industry in Victoria.

The Northern Territory appears to have adopted a similar approach in that the Sex Industry Act (NT) 2019, while defining sex work as a declared activity for the purpose of the Public and Environmental Health Act (NT) 2011, exempts sexual service businesses from registration with the health department, and prohibits police officers from acting as authorised officers for the purpose of enforcement.

There appears to be good evidence that better public health outcomes, and better opportunities for education and organising around OHS and rights at work could be created without coercive offence provisions as in Division 10 of Part 8. If Division 10 of Part 8 of the PHWA is retained, SKLS believes it is absolutely essential to not involve traditional aspects of the criminal justice system such as police in the enforcement of its provisions. This requires amending the PHWA to include a further subsection that provides:

⁴⁴ Donovan, B., Harcourt, C., Egger, S., & Fairley, C. K. (2010). Improving the health of sex workers in NSW: maintaining success. *New South Wales public health bulletin*, 21(4), 74-77.

⁴⁵ Ibid.

⁴⁶ Bates, J., & Berg, R. (2014). Sex workers as safe sex advocates: sex workers protect both themselves and the wider community from HIV. *AIDS Education and Prevention*, 26(3), 191-201. Also see Australian Department of Health. (2018). Eighth National HIV Strategy.

A police officer may not exercise powers or perform functions as an authorised officer under this Act in relation to sex work and sex work businesses.

SKLS also recommends government considers any ways in which the contents of Division 10 of Part 8 could be reconfigured to sit with more generic provisions of the PHWA that regulate other personal services, so as to reduce the stigmatisation of sex work within the PHWA. For example, there could be similar hygiene and training requirements imposed on sex work businesses as are with the personal services regulated under Divisions 3 and 4 of Part 6 and the regulations, but this could be imposed with prohibition of police enforcement and an exemption from registration requirements as occurred in the SIA in the Northern Territory. The purpose of providing an exemption from registration would, again be based on seeking to avoid an ‘underclass’ of unregistered businesses that may undermine improved public health outcomes.

Part 2: Intersections between sex work community and LGBTIQ community

Since the advent of the social rights and feminist movements of the 20th century, it has been well documented that large intersections exist between both the sex work community and the LGBTIQ+ community. The recent launch of the Roberta Perkins Law Project serves as a recognition of this overlap, through the recognition of Ms Roberta Perkins; a prominent and founding activist responsible for establishing Australia’s first trans rights and sex worker movements.⁴⁷ In addition to being a founding member of the Australian Transsexual Association (ATA), she also helped to found the Australian Prostitutes Collective (APC) and advocated heavily for the rights and lives of sex workers, substance users and the queer community during the HIV/AIDS crisis. Furthermore it has been documented that both prior to and post the Stonewall movements, many public communities of LGBTIQ+ individuals were strongly embedded in sex work; that has continued into modern day sexual liberation movements.⁴⁸

The historic relationship between the LGBTIQ community and the sex work community has continued and expanded with the advent of the digital age and availability of alternate forms of sex work such as camming and widely available pornographic websites; which whilst not the focus of the current submission are important for context. Arguably one of the contributing factors of this large overlap is the compounding effect of societal stigma, when placed on individuals who are said to embody negative attributes that disqualify them from full social acceptance.⁴⁹ It has been noted in various studies that the feelings of shame

⁴⁷ Geraldine Felda, ‘About Roberta Perkins’, *Roberta Perkins Law Project* (LGBTIQ Legal Service Website, 1/7/2020) < <https://lgbtiqlegal.org.au/roberta-perkins-law-project/> >

⁴⁸ Svati P. Shah, ‘A New Queer Agenda; Sex Work and Queer Politics in Three Acts’ (2011-2012) 10.1-10.2 *The Scholar and Feminist Online* <<https://sfonline.barnard.edu/a-new-queer-agenda/sex-work-and-queer-politics-in-three-acts/0/?print=true>>

⁴⁹ Lynzi Armstrong, ‘Stigma, decriminalisation, and violence against street-based sex workers: Changing the narrative (2019) 22(7-8) *Sexualities* 1288.

and isolation often associated with stigma can have a variety of effects including with regards to potential employment, friendships and familial relationships. It is prudent at this stage to acknowledge that specifically in relation to street based sex workers identifying as LGBTIQ, that this will oftentimes involve negotiating additional complex stigma, associated with transphobia and homophobia; that may involve a lack of familial, economic or emotional support and may have complex and compounding interactions.⁵⁰

Whilst minimal research regarding the intersection between the sex work and LGBTIQ+ community is available and of relevance today, it has been acknowledged that trans and gender diverse street based sex workers experience violence, stigma and prejudice on multiple layers.⁵¹ When unpacking the stigma and prejudice faced by the LGBTIQ community, the Legal Needs Analysis (LNA) produced by the LGBTIQ legal service as part of the health-justice partnership offers some insight regarding those experiences. This report noted that amongst other things the legal needs of individuals is shaped by disability, education levels, unemployment, housing, social security, cultural background and Aboriginal/Torres Strait Islander status.⁵²

Prior to discussing the intersection between the LGBTIQ and sex work communities, it is prudent to contextualise the stigma faced by the LGBTIQ community. The LNA illustrates that over 70% of LGBTIQ individuals have been bullied, harassed or attacked, and that 53.2% of trans and gender diverse (TGD) individuals have experienced sexual violence and coercion. Additionally between 2018-2019 there had been a reported total of 331 murders of TGD individuals (however this figure may be subject to underreporting).⁵³ The cumulative effects of this violence and stigma are large contributing factors to over 80% of LGBTIQ clients indicating poor mental health, whilst having a more significant effect on TGD individuals.⁵⁴ Reports on the mental health of TGD individuals show that generally speaking members of this community were nearly eleven times more likely to attempt suicide than the general population; with this figure increasing with experiences of abuse/harassment. Further the report showed that 48.1% of members had attempted suicide, and 79.7% had self harmed during their lifetime.⁵⁵ It is not surprising in light of stigma and discrimination faced by the LGBTIQ community that 45% of queer women used illicit substances, and 22% of TGD people report having experienced homelessness; and 71% being unable to live with family.⁵⁶

⁵⁰ (above in previous two)

⁵¹ Armstrong (n39) 1296.

⁵² LGBTIQ Legal Service, *Legal Needs Analysis* (Report, July 2020) p4 at <https://lgbtiqlegal.org.au/wp-content/uploads/2020/07/LGBTIQ-Legal-Needs-Analysis.pdf>

⁵³ Ibid, p5.

⁵⁴ Ibid, p7.

⁵⁵ National LGBTI Health Alliance, *Snapshot of Mental Health and Suicide Prevention Statistics for LGBTI People*, February 2020, p 10 at <https://lgbtihealth.org.au/wp-content/uploads/2020/02/2020-Snapshot-of-Mental-Health-and-Suicide-Prevention-Statistics-for-LGBTI-People-LGBTI-Health-Alliance.pdf>

⁵⁶ LGBTIQ Legal Service (n42) p10.

Sapphire's Story

Sapphire was a community member with whom SKLS consulted, who had previously engaged in street-based sex work as a transgender woman. Sapphire reported that her experiences with sex work had involved a large interplay with other social conditions; including unemployment, homelessness, stigma and violence. The compounding effects of transphobia and other forms of stigmatisation led to instability of housing and eventual homelessness, and was a leading factor preventing Sapphire from gaining stable housing and employment. During the period of homelessness that coincided with the beginning of transition, Sapphire relied largely on sex work to help find and fund both stable housing and living essentials.

It should be noted from the outset that individual workers may engage in sex work for a range of reasons including fulfillment, self-esteem, confidence, enjoyment or survival. Some sex workers from the LGBTIQ community may choose to engage in sex work due to the discrimination they face, and the lack of support from society. In many cases for members of the TGD community, the cumulative lack of familial support, challenges accessing medically supported transition and increased risk or experience of homelessness may lead to engagement in sex work to address these challenges.⁵⁷ In line with this, it has been argued that sex work environments will further reinforce stigma and lead itself to structural constraints that severely limit the options and opportunities of LGBTIQ sex workers.⁵⁸ Furthermore research has shown that ideas around the disposability of TGD sex workers and the lack of opportunity surrounding choice of sex work environments, are fuelled primarily by discrimination and work and social hierarchies that increase vulnerability to extortion and violence.⁵⁹

April's story

April was a community member with whom SKLS consulted and had previously engaged in brothel based sex work as a transgender woman. April told us that she worked in brothels where she experienced exploitation and lack of regard for sex workers' safety and security. These practices included letting bookings with clients run overtime without interrupting at the end of the booking if business was slow and there were no other clients waiting – this was done instead of allowing the worker to end the booking and have a break from work. Another practice involved making it practically very difficult for workers to refuse bookings, where if April or her colleagues sought to limit bookings within a shift of refuse any bookings, they would not get further shifts. These practices are only some examples of what April experienced, and need to be seen in the context of the specific power imbalance experienced by trans women working in the brothel sector, where discrimination occurs and there is poor choice of employers willing to hire trans women, and therefore limited options. Limited employment options for trans women in the sex industry (as well as more

⁵⁷ Svati P. Shah, (n56) p4.

⁵⁸ Tara Lyons et al, ' The impact of construction and gentrification on an outdoor trans sex work environment; Violence, displacement and policing' (2017) 20(8) *Sexualities*

⁵⁹ Ibid, p883.

broadly in the community) contribute to an atmosphere where it is difficult to refuse or challenge the demands of management and clients. April says the current regulatory environment for sex work in Victoria left her with little choice or autonomy over her work or conditions. April said that the best possible working environment for her, from a safety and autonomy perspective, would be the ability to work collectively with other sex workers, and to work from home. The current system makes this impossible for her to do so in compliance with the law.

When discussing the conditions faced by the LGBTIQ community, the limited research conducted into the intersection it has with the sex work community should be highlighted. Notably that in addition to the high rates of violence and homicide discussed above, around 66% of street based sex workers identifying as TGD had reported serious cases of violence; notably rape at gun point, physical assault, rape and robbery.⁶⁰ This is further compounded by the fact that female street based sex workers are overall more likely to be the victims of homicide than the population of women generally; with between 50-100% experiencing violence.⁶¹

It is clear that the compounding effects of stigmatisation faced by LGBTIQ sex workers places them at a highly increased risk of violence, homelessness, discrimination and vulnerability; all of which lead to an increased risk of extortion and harm. SKLS notes that there is a clear need for current evidence establishing the needs and specific experiences of this cohort, and this would assist, among other things, with future service design. SKLS recommends that any future research or needs analysis is conducted in a participatory framework that includes affected communities in the design of research questions and strategies.

Finally, April's story also demonstrates the need to ensure that our regulatory system facilitates rather than hinders workers seeking out safer, less exploitative and more autonomous work situations. For April, this would involve being able to work cooperatively with more than one other sex worker. The current system creates a dichotomy between commercial sex work businesses such as brothels, and private worker businesses involving only one or two individuals (as per s23 of the SWA which allows an exemption from licensing in the latter case). April's case demonstrates that any revisiting of planning schemes and other instruments in the wake of decriminalisation should include some flexibility within the spectrum between these two opposing types of sex work business.⁶²

⁶⁰ Note that this study contained a small sample size of only six transgender workers and due to the date of publication is likely to be unrepresentative in modern times: Christine Harcourt et al, 'The health and welfare needs of female and transgender street sex workers in New South Wales' (2001) 25(1) *Australian and New Zealand Journal of Public Health* p84.

⁶¹ Armstrong (n39) p1292.

⁶² See Pitcher, J., & Wijers, M. (2014). The impact of different regulatory models on the labour conditions, safety and welfare of indoor-based sex workers. *Criminology & Criminal Justice*, 14(5), 549-564. This article discusses, in the context of the Netherlands and the UK, the need for sex work regulation to facilitate sex workers choosing to work collectively.

PART 3 - Recommendations

General

Recommendation 1:

The Victorian government should substantially amend or repeal and replace the Sex Work Act (Vic) 1994 to remove its purpose of seeking 'to control sex work', and to remove the licensing and registration system.

This should be replaced with an explicit policy platform to combat discrimination and stigma faced by sex workers, and to achieve optimal human rights and public health outcomes for sex workers and the broader community using evidence-based strategies such as peer-based health and rights promotion initiatives for sex workers. This should translate through to the stated purpose of any new legislation replacing/amending the SWA.

Recommendation 2

Identify offences in the in Sex Work Act (Vic) 1994 that duplicate existing criminal offences located in generic criminal laws and repeal these offence provisions.

Recommendation 3

The government should repeal or qualify the application of section 62 of the Equal Opportunity Act (Vic) 2010 to ensure it does not allow discrimination against sex work service providers that are no longer justifiable post decriminalisation.

The section 62 exception to the Act's prohibition on discrimination by accommodation providers should only be available to accommodation providers whose legal and regulatory burdens would genuinely be made too onerous by being unable to lawfully exclude sex work businesses from the premises. Depending on the model of decriminalisation adopted, the situations where this could occur should become rare, and should not arise with small owner operated businesses.

Street Based Sex Work

Recommendation 4

Offences that specifically criminalise the offer or purchase of street based sex work services, and any legislated police powers associated with those offences, should be abolished.

Note: This should be achieved by either:

- wholesale repeal of the SWA or;
- amendment of the SWA to remove sections 12 and 13 and Part 2A (Banning Notices)

Recommendation 5

The Victorian government should commission a feasibility study and/or needs analysis for a 'sex worker centre' in the City of Port Phillip.

Recommendation 6

The Sentencing Act 1991 should be amended to provide for an expunged conviction scheme, and the Equal Opportunity Act (Vic) 2010 should accordingly also be amended to add having an expunged conviction for street based sex work related offences to the protected attributes listed in section 6.

Planning and Public Health**Recommendation 7**

The Victoria Planning Provisions (VPP) should be amended in accordance with the prescribed process in the Planning and Environment Act 1987 to clarify that where sex work is a home based business, it is subject to the same conditions and exemptions from obtaining a planning permit as other home based businesses.

Recommendation 8

The VPP should be amended in accordance with the prescribed process in the Planning and Environment Act 1987 to remove reference to the SWA. The VPP related to brothels should be redesigned to function coherently within the generic purposes of the Planning and Environment Act (1987) absent reliance upon the provisions of the SWA.

A distinction should be made in the VPP between small owner-operated and cooperative based sex work businesses that are non-home based compared to larger commercial brothels. Such small businesses should be distinguished from larger commercial brothels and should have their own specified planning requirements in relation to impact upon local amenity, and potentially these businesses should be made exempt from obtaining planning permits provided they are meeting those requirements.

Recommendation 9

The Victorian state government should establish a sex work decriminalisation working group which should include within it:

- Representatives of the Department of Planning and Environment and the Department of Health and Human Services and;

- Representatives from the sex work industry, which at a minimum must include specified representatives from a Victorian peer only sex work organisation.
- Representatives from relevant organisations in the community health sector.
- Representatives from the LGBTIQ+ community

This group should work collaboratively and may create sub groups in order to:

- formulate advice and provide education and support to both government Departments and relevant Ministers, as well as to local council authorities in giving effect to decriminalisation.
- Consider and determine what additional support may need to be provided to particular local councils in working collaboratively to give effect to the objectives of decriminalisation.
- Oversee the design and implementation of new peer-based health and rights promotion programs.
- Commission monitoring and evaluation of these.

Recommendation 10

Either repeal Division 10 of Part 8 of the Public Health and Wellbeing Act (Vic) 2008 amend it to include a new subsection as follows:

A police officer may not exercise powers or perform functions as an authorised officer under this Act in relation to sex work and sex work businesses.

Recommendation 11

Engage in an assertive strategy of collaboration between:

- the Department of Health and Human Services;
- relevant community health organisations and programs and
- peer only organisations such as Vixen Collective;

To enhance the capacity of current community health programs and to resource additional peer-based public health, sexual health and occupational health and safety initiatives. It may also be appropriate for Worksafe to be included in the collaborative strategy as a partner.

Recommendation 12

Fund sex worker peer-based organisations such as Vixen Collective to enable them to participate in developing a peer health and rights promotion strategy and to deliver peer-based education programs both for sex workers and the wider community, and to participate in a decriminalisation government working group and any other community consultation or research processes that may occur.

Recommendation 13

Government should support the development of participatory and community-led research to understand the needs and specific experiences of LGBTIQ sex workers, and particularly transgender and gender diverse sex workers. This recommendation should not however serve as a barrier to a process of decriminalisation, and should instead be viewed as an ancillary process to decriminalisation.