

Sex Work Regulations 2016 Consultation
Policy and Legislation Branch
Consumer Affairs Victoria
GPO Box 123
Melbourne VIC 3001
Email: cav.consultations@justice.vic.gov.au

Submission: Sex Work Regulations 2016 Consultation

About SWOP

The Sex Workers Outreach Project (SWOP) was established 25 years ago and is Australia's largest and longest established community-based sex worker organisation focused on HIV, STI and Hepatitis C prevention, education and health promotion for sex workers in NSW. A key element in the success of SWOP's work is the building of strategic, collaborative and multidisciplinary working relationships with sex workers, and other key health, government and non-government organisations, advocating for a holistic approach to the health services provided to sex workers.

SWOP sees more sex industry workers in NSW than any other organisation

In 2014-15, SWOP saw 5,212 sex industry workers, of whom 2,331 (44.7%) came from a culturally and linguistically diverse background. SWOP's diverse team includes Thai, Korean and Chinese speaking outreach officers, nationalities which reflect the current makeup of the New South Wales (NSW) sex industry.

Differing state based sex work regulations make sex workers vulnerable

Sex workers who access our service often travel to Victoria to work. Confusion about differing state-based regulation is a common question from sex workers who work in both jurisdictions. Confusion about the law creates opportunities to exploit sex workers.

In jurisdictions like Victoria and Queensland, interstate sex workers can be unaware of the legality of their work, and more easily exploited. In January 2012 Stephen Templeman posed as a policeman to obtain sex by deception as described in this media article in the Brisbane Times: *Father poses at cop to get free sex*ⁱ. More recently in January 2016, an unnamed 34-year old man is alleged to have committed a similar crime with a female worker as described in this media article: *Man accused of impersonating a police officer and forcing a prostitute to perform sex acts fronts court*.ⁱⁱ

Decriminalisation produces the best health and safety options for Australian sex workers

NSW is currently in its twenty-first year of sex work decriminalisation. Decriminalisation of sex work is the best regulatory system for sex workers because it allows sex work to be treated as what it is: work; and it removes the barriers to engagement with regulation and regulatory bodies that are produced by alternative systems of legalisation, licensing, regulation and criminalisation.

Our evidence base here in NSW shows that the decriminalisation of sex work back in 1995 has largely served the interests of sex workers, and the wider NSW population, well. It has resulted in very low rates of HIV and STI prevalence and incidence, high rates of access to health promotion and

Self-Determination ● Workplace Rights ● Diversity ● Holistic Health

support services by sex workers, and increased capacity of sex workers, including those from Asian and other non-English speaking backgrounds, to look after their health and welfare.

It is also SWOP's view that health and safety of sex workers is best served by a system of regulation which minimises the potential for de facto 'criminalisation' through the imposition of unnecessary restrictions and requirements with which workers and operators will struggle to comply. An 'open' system in which there is a high level of access to sex premises by our outreach programs and by regulators and in which sex workers are empowered to insist on their rights to health and safety, is one most likely to produce high levels of compliance with occupational health and safety requirements. Further, the easier it is for services and workers to comply with regulations, and the more 'open' the system, the less opportunity arises for corrupt conduct or criminal involvement, including activities such as extortion or trafficking. This has been demonstrated through 20 years of decriminalisation here, which has seen the gradual but steady improvement of sex workers health, capacity and working conditions.

Decriminalisation has allowed NSW sex workers to go to the police with complaints or allegations about their work without fear of being punished for being a sex worker. Victorian sex workers have long campaigned for the same ability as our local counterparts. The Vixen Collective's Jane Green put this most eloquently: "We want to have the same ability as other people to reach out to the police for assistance when something goes wrong ... to be able to reach out to the workplace ombudsman," she said. "We don't have those things at the moment and that's what we really need."ⁱⁱⁱ

Condoms are utilised in over 99% of anal and vaginal sex undertaken in the NSW sex industry,^{iv} with equivalent rates of use amongst the general population of sex workers and sex workers with an Asian background. The rates of STIs amongst female sex workers in NSW are lower than that of other sexually active females in NSW. Demand and pressure to perform unsafe sex has also fallen.^v Local research shows us that in NSW female workers of Asian background, generally perceived as most vulnerable to a range of health and safety concerns, have since 1992, seen an increase in their English language skills, testing rates and service engagement, and a concomitant decline in STI prevalence rates such that it equals those of non-Asian workers.^{vi}

There has not been one recorded case of HIV transmission due to commercial sex work in NSW. This along with the rates of STIs have only been achievable since decriminalisation and represents a positive public health outcome that is acknowledged internationally as being world leading. These achievements have only been possible through concerted peer outreach programs, especially peer based education undertaken by people with targeted language skills^{vii} and the consistent and enthusiastic uptake of these education programs by sex workers themselves.

Decriminalisation is also a fiscally sensible practice. According to evidence presented by *The Lancet* at AIDS 2014, the decriminalisation of sex work would have the greatest impact on the HIV epidemic globally, reducing HIV by up to 46% in the next decade and resulting on cost saving thresholds of tens of millions of dollars.^{viii} The Kirby Institute's 2012 report to government called *The Sex Industry in New South Wales: A Report to the NSW Ministry of Health* study declared the NSW sex industry "the healthiest sex industry ever documented" and advised the government to scrap the few remaining laws around the industry, stating: "reforms that decriminalised adult sex work have improved human rights, removed police corruption [and] netted savings for the criminal justice system... International authorities regard the NSW regulatory framework as best practice."^{ix}

Self-Determination ● Workplace Rights ● Diversity ● Holistic Health

Mandatory testing in Victoria should be abolished to respect the human rights of sex workers

Sex workers in NSW are recognised globally for their low rates of sexually transmitted infections. This outstanding achievement occurs in a jurisdiction that does not employ mandatory sexual health testing. It is remarked upon in the NSW Government's current HIV Strategy - [NSW HIV Strategy 2012-2015: A New Era by NSW Health](#), which states that: "Sex workers in NSW have been very successful at protecting their own and their clients health, as peer education and outreach by the Sex Worker Outreach Project (SWOP) based at ACON, have played a central role in achieving these health outcomes."^x

Australia is in a unique position to compare the outcomes of mandatory testing with voluntary testing. "There is no evidence to suggest that voluntary testing is inadequate or ineffective in detecting STIs and HIV. Rather, there has been demonstrated success among sex workers in Sydney and Perth (where testing is voluntary), who show uniformly low STI prevalence when compared with sex workers in Melbourne (where testing is mandatory)."^{xi} SWOP is strongly against mandatory testing of both STIs and HIV for sex workers because the evidence-base supports that greater rates of testing, and lower incidences of STIs and HIV, within this priority population follows in states where mandatory testing is not in place.

Mandatory testing is critiqued by sex workers for the way it forces a widely diverse industry into a homogenous group, expecting the same testing regime to suit all types of sex workers. As Jeffreys et al point out: "For sex workers who engage in massage, masturbation, bondage and discipline, X-rated striptease or fantasy scenarios that do not involve penetrative sex or exchange of bodily fluids, mandatory testing may be unnecessary, or at the very least, it may bear no relevance to their personal practice. Other sex workers may work infrequently, for whom monthly STI screening intervals may be inappropriate and intrusive."^{xii}

Every sex worker in Australia has the right to be in control of their own healthcare decisions, including how, and when they are tested for HIV. Jeffreys et al agree, saying: "A sex worker's decision to seek STI and HIV testing should be based on one's individual practice (as is the case for non-sex workers), rather than mandated at law." This allows for differences between workers, as well as respecting sex worker human rights. Mandatory testing is, in and of itself, a health barrier to sex workers, as well as a barrier to the full exercise of sex workers' human rights. The shame associated being mandatorily tested in some states ensures that all sex workers across Australia remain stigmatised. This ongoing stigmatisation and discrimination is the largest barrier to equality of health outcomes for sex workers across the globe

In 2012, the Australian Federation of AIDS Organisations (AFAO), along with its member organisations, developed a discussion paper called *Implementing the United Nations Political Declaration On HIV/AIDS in Australia's Domestic HIV Response: Turning Political Will Into Action* in response to The UN Political Declaration on HIV/AIDS (2011). The paper calls upon the Australian Government, to recommit to an effective domestic HIV response. For sex workers, this does not mean mandatory STI and HIV testing. The document states: "Mandatory STI and HIV testing for sex workers is contrary to best-practice models of voluntary testing outlined in the National HIV Testing Guidelines and the National Strategies, and is not justified by current epidemiology in Australia. Compulsory testing creates an unnecessary, expensive burden on public health funds, leads to sex workers hiding their profession from medical experts, jeopardises sex worker privacy, consumes resources that could be better spent on high risk groups, and can engender a false sense of security among clients leading to increased requests for unsafe practices."^{xiii}

Self-Determination ● Workplace Rights ● Diversity ● Holistic Health

SWOP welcomes the proposed changes to sex work advertising laws, but they could go further

The current advertising laws governing Victorian sex work advertisements are too restrictive, and through being restrictive encourage the general public to think sex work businesses are not lawful businesses like any other sorts of businesses that advertise. SWOP feels the proposed changes are a step in the right direction, but do not go far enough. Sex work businesses should not be seen as 'special case' advertisers needing their own raft of laws.

That said, with sex workers still stigmatised and discriminated against in many settings, including when renting homes or changing employment, the proposed changes which allow full body photographs of sex workers in online advertisements are important. Many sex workers, including those with children, are unable to advertise using a head-and-shoulder shot for fear of being discriminated against in a range of settings, including their children facing discrimination at school. As such SWOP supports the proposed change to allow internet advertising to allow "photographic or other pictorial representation of a person which is not restricted to the head and shoulders".

SWOP also supports the proposed removal of the restrictions on "references to the race, colour or ethnic origin, in addition to sexual orientation, of the person offering sexual services" as they will benefit sex workers by recognising them as business people for whom time is important. As the law currently sits, sex workers are subjected to large volumes of inquiries from clients, including fielding calls from racist clients, by virtue of their ads not being able to contain sufficient descriptive detail.

Prohibiting sex workers from advertising their businesses "through radio, television, film and video recording" to us is an unnecessary restriction that handicaps sex industry businesses in a way other Australian businesses are not. Sex workers should have access to the same range of advertising opportunities as other Australian businesses, with the adult aspects of their content limited by the same mechanisms that they are for other businesses.

Registration process is confusing for interstate sex workers and raises privacy concerns

With stigma and discrimination being rife against sex workers across Australia, many express concerns to SWOP about having to register with the CAV/BLA. In addition to the expected privacy concerns with being registered as a sex worker, our service users are particularly concerned about the idea that this registration may one day be used to subject them to future discrimination.

Interstate sex workers who are not in close contact with local sex worker organisations often unwittingly break Victorian law with advertising their interstate work, and contact us after receiving distressing legalese emails regarding their online advertisements. Changing this requirement to not require registration and SWA numbers from individual sex workers would save the Victorian Government money and time as policing this is a labour intensive process. Ending this practice would help ensure sex worker privacy both now, and in the future, and end aggressive policing practices in other states which cause emotional distress to NSW sex workers who in their home state wouldn't be breaking any law by simply placing an advertisement on the internet.

Self-Determination ● Workplace Rights ● Diversity ● Holistic Health

RECOMMENDATIONS

- 1: SWOP urges you to reconsider your proposed regulation changes and instead support the implementation of full decriminalisation of sex work, in line with NSW.**
- 2. SWOP urges you to reconsider the continuation of mandatory testing as it violates the human rights of sex workers and does not produce better health outcomes than voluntary testing.**
- 3. SWOP supports the proposed change to advertising laws but would rather see sex work advertisements governed by the same laws as other Australian businesses.**
- 4. SWOP advocates for the removal of SWA numbers both for privacy, and for the ease of interstate sex workers who travel to work in Victoria.**

SWOP's recommendations are based upon our 25 years of organisational experience working with sex industry workers in NSW. We also draw your attention to the submission made by The Vixen Collective's, Victorian's only peer-based sex worker organisation. We lend our organisational support to the recommendations they have made reflecting the lived experiences this review's key stakeholders, Victorian sex workers.

Should you require more information on regarding sex work regulation as it relates to the NSW sex industry, I can be contacted on +61 2 9206 2166 or by email: ceo@swop.org.au

Regards,



SWOP Chief Executive Officer

Self-Determination ● Workplace Rights ● Diversity ● Holistic Health

Sex Workers Outreach Project (SWOP) | Level 4, 414 Elizabeth Street, Surry Hills NSW 2010 | PO Box 1354 Strawberry Hills NSW 2012

Tel: (02) 9206 2166 (in Sydney/interstate) | **Freecall:** 1800 622 902 (outside Sydney in NSW) | **Fax:** (02) 9206 2133

Email: swopconnect@swop.org.au | **Web:** www.swop.org.au

-
- ⁱ Brisbane Times, *Father poses as cop to get free sex*, 20 January 2012, <http://www.brisbanetimes.com.au/queensland/father-poses-as-cop-to-get-free-sex-20120119-1q935.html> accessed 03/03/16.
- ⁱⁱ News.com.au, *Man accused of impersonating a police officer and forcing a prostitute to perform sex acts fronts court*, 21 January 2016, <http://www.news.com.au/lifestyle/real-life/news-life/man-accused-of-impersonating-a-police-officer-and-forcing-a-prostitute-to-perform-sex-acts-fronts-court/news-story/bcb76b094480fd1914b93c3fce9179aa> accessed 03/03/16.
- ⁱⁱⁱ 774 ABC Melbourne, *Sex worker group Vixen Collective disappointed by Victorian regulation review*, 29 Jan 2016, <http://www.abc.net.au/news/2016-01-29/sex-worker-group-condemns-victorian-regulation-review/7123462> accessed 03/03/16.
- ^{iv} Donovan, B et al, *Improving the health of sex workers in NSW: Maintaining Success* NSW Public Health Bulletin Vol. 21, 2010.
- ^v Pell, C et al, *Demographic, migration status, and work related changes in Asian female sex workers surveyed in Sydney 1993 and 2003*, Australian and New Zealand Journal of Public Health, Vol 30 No 2, 2006.
- ^{vi} Pell, C et al *Demographic, migration status, and work related changes in Asian female sex workers surveyed in Sydney 1993 and 2003*, Australian and New Zealand Journal of Public Health, Vol 30 No 2, 2006.
- ^{vii} Donovan, B et al 2010.
- ^{viii} The Lancet, *HIV and Sex Work*, July 2014. <http://www.thelancet.com/series/HIV-and-sex-workers>
- ^{ix} Donovan B, Harcourt C, Egger S, Watchirs Smith L, Schneider K, Kaldor JM, Chen MY, Fairley CK, Tabrizi S (2012). *The Sex Industry in New South Wales: a Report to the NSW Ministry of Health*.
- ^x NSW HIV Strategy 2012-2015: A New Era by NSW Health, 16.
- ^{xi} Jeffreys, Elena, Fawkes, Janelle, Stardust, Zahra, *Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention*, World Journal of AIDS, 2012, 2, 203-211 doi:10.4236/wja.2012.23026 Published Online September 2012 (<http://www.SciRP.org/journal/wja>).
- ^{xii} Jeffreys, Elena, Fawkes, Janelle, Stardust, Zahra, *Mandatory Testing for HIV and Sexually Transmissible Infections among Sex Workers in Australia: A Barrier to HIV and STI Prevention*, World Journal of AIDS, 2012, 2, 203-211 doi:10.4236/wja.2012.23026 Published Online September 2012 (<http://www.SciRP.org/journal/wja>).
- ^{xiii} AFAO, *Implementing the United Nations Political Declaration on HIV/AIDS in Australia's Domestic HIV Response: Turning Political Will into Action*, July 2012.

Self-Determination ● Workplace Rights ● Diversity ● Holistic Health

Sex Workers Outreach Project (SWOP) | Level 4, 414 Elizabeth Street, Surry Hills NSW 2010 | PO Box 1354 Strawberry Hills NSW 2012

Tel: (02) 9206 2166 (in Sydney/interstate) | **Freecall:** 1800 622 902 (outside Sydney in NSW) | **Fax:** (02) 9206 2133

Email: swopconnect@swop.org.au | **Web:** www.swop.org.au