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Submission: Review of the Family Law System IP48

The Sex Workers Outreach Project (SWOP) was established in 1990, 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 New South Wales (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.

As the key organisation outreaching to sex workers in NSW, SWOP has the highest level of direct contact with sex workers of any agency, government or non-government in Australia. Throughout 28 years of operation, SWOP has consistently maintained high levels of access into sex industry workplaces across NSW. Along with a dedicated Aboriginal and Torres Strait Islander position, we also operate three specific culturally and linguistically diverse (CALD) projects employing bilingual project workers, which has resulted in extremely high levels of engagement with CALD and migrant sex workers throughout NSW.

As a sex worker health organisation, SWOP's key concern in responding to this Review of the Family Law System IP48 is to protect the health, safety and human rights of NSW sex workers. Despite 23 years of decriminalisation here in NSW, sex workers still experience high levels of stigma and discrimination that impede the full exercise of their human rights. While entering the family law system is likely a source of anxiety for all participants, for sex workers this anxiety is magnified, largely through fear of being outed, stigmatised and discriminated against for their occupation.

To this end, SWOP has outlined a number of recommendations to help ensure that sex workers experience the same access to justice in the family law system as other Australian workers:

Question 5: How can the accessibility of the family law system be improved for Aboriginal and Torres Strait Islander people?

Being a sex worker, or providing sex for favours, can be a significant source of shame for Aboriginal and Torres Strait Islander peoples. Even the provision of culturally safe services, and culturally secure court hearing processes, may not be enough to ensure justice occurs if these matters are raised in a family law setting. Fear of losing children is particularly significant to these communities, still suffering under intergenerational trauma of the Stolen Generation.

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We would recommend a statement using straightforward language in terminology already employed by these communities that states doing sex for favours is not, in and of itself, considered a reason to deny access or remove children. We would also argue that when formal or informal sex work is raised in family law settings, closed court proceedings and additional court support, ideally from an organisation like SWOP, should be offered.

Question 6: How can the accessibility of the family law system be improved for people from culturally and linguistically diverse communities?

Culturally and linguistically diverse sex workers are often not out to their home community about being a sex worker. This can stem from arriving in Australia from countries where the persecution of sex workers is a significant issue. At SWOP we often hear from migrant or newly arrived sex workers where English is not a first language, that they did not know it was legal to be a sex worker in Australia. Doubt about the legality of sex work can be a barrier to migrant or newly arrived sex workers seeking help or exercising their rights in the family law system in the first place.

Migrant and culturally and linguistically diverse sex workers in Australia also shoulder the double burden of racism and anti-sex worker sentiment. They are barraged with repeated and derogatory fake news items that imply a lack of agency by labelling them “trafficked”; threaten their livelihood by calling their workplaces “illegal” brothels; and point to them having poorer health standards than Caucasian sex workers (something which is not reflected in the evidence). In this hostile climate, being outed as a sex worker in a family law setting is likely to be particularly traumatic for culturally and linguistically diverse litigants.

In terms of promoting a learning culture, we would suggest multilingual information that informs all Australians entering the family law system that being a sex worker in Australia is legal, and is not a reason to declare anyone an unfit parent. Migrant sex workers would likely also benefit from closed court and additional in-language court support, ideally from an organisation like SWOP, when sex work is raised. Court support from sex work friendly support workers who speak the same language can also help to ensure that court appointed translators use appropriate, non-stigmatising language when translating legal matters. SWOP has received numerous reports from migrant and CALD sex workers that inappropriate translation is a barrier to achieving health and justice.

Question 8: How can accessibility of the family law system be improved for lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) people?

As sex workers, we related strongly to this section in the Issues Paper because it talked about the *“added layer of difficulty to their separation process due to their concerns about finding support of a service provider.”* Sex workers, who can of course also be LGBTIQ, also report poor outcomes from approaching a range of legal services. This can lead to them self-representing, for fear of experiencing stigma and discrimination, and to poorer outcomes, whether represented or self-represented. While we agree that training for family law professionals working with LGBTIQ people is essential, we would add training about working with sex workers is equally as important.

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As a small organisation working with a limited budget, SWOP currently trains GPs, NSW Police and sexual health staff on working with sex workers. With additional funding we would be well-placed to extend sex worker sensitivity training to NSW family court professionals, including counsellors and legal staff. It is likely that with sufficient funding, other state-based sex worker organisations could offer the same.

Question 9: How can the accessibility of the family law system be improved for people living in rural, regional and remote areas of Australia?

Working as a sex worker in rural or remote NSW can be difficult. Privacy in these settings is paramount, as stigma and discrimination can be intensified. We would argue for closed court proceedings, with a strong eye to ensuring the safety of rural/regional sex workers is not compromised by being outed to their local community. We would also highlight that these workers may be vulnerable to not being able to access appropriate representation due to fear of being outed in their local community by local family law professionals. Sex worker sensitivity training would be a great step toward ensuring family law professionals understood the stigma and discrimination faced by sex workers in rural and regional settings. All of these issues would be heightened for Aboriginal and Torres Strait Islander people doing formal or informal sex work in these settings, where cultural safety would be even more of an issue than in an urban environment where discretion is easier to manage.

Question 11: What changes can be made to court proceedings to improve their accessibility for litigants who are not legally represented?

At SWOP we strongly believe all family law participants should be able to access affordable, non-discriminatory legal representation. In the previous answers we have indicated a number of settings where stigma and discrimination, either real or perceived, might prevent sex workers from accessing legal representation. Despite sex work being a legal occupation here in NSW, in the course of our work here at SWOP in 2017, we provided 5665 occasions of service to sex workers, of which 1557 (27.5%) included discussion of legal issues. We discussed legal issues more often than we discussed workplace health and safety (1533), financial/taxation (1053), council regulation (762) and mental health (763). Legal referrals to sex worker friendly legal services made up 10% of all the referrals we made, and 49% of all non-health related referrals we made, making them easily our most frequent non-health related referral. We have an ongoing partnership with Inner City Legal Service to ensure NSW sex workers get adequate access to justice.

While we believe that all legal services should be non-discriminatory, our work with NSW sex workers detailed above means we also recognise the value for sex workers of a referral that helps them feel like they can confidently raise their occupation without penalty. As such we would suggest a two-pronged strategy with sex worker sensitivity training helping to ensure less stigmatising and discriminatory behaviour from family law professionals, combined with additional information about finding affordable, non-discriminatory representation for litigants considering self-representation.

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SWOP would be a great referral point to assist sex worker litigants find sex worker friendly legal advice/representation here in NSW.

Question 15: What changes could be made to the definition of family violence, or other provisions regarding family violence, in the *Family Law Act* to better support decision making about the safety of children and their families?

SWOP supports the inclusion of abuse of process as an example in the definition of family violence. Stigma/discrimination against sex workers can make sex workers particularly vulnerable to misuse of process as a form of family violence. We speak further to this issue in Question 25.

Question 20: What changes to court processes could be made to facilitate the timely and cost-effective resolution of family law disputes.

We believe that as court cases involving “risk to the child” involve lengthier resolution timeframes, it would save family law system time to make it clear to all Australians that being a sex worker is a legal occupation, and not a risk to the child; and that submissions solely made on this basis will be summarily dismissed as lacking merit. This information should be made in multiple languages.

Question 25: How should the family law system address misuse of process as a form of abuse in family law matters?

Directly relating to our answer above, raising sex work history can be done vexatiously as an abuse of process in the family court system. Parties can employ stigma against sex workers to imply the other party is an unfit parent. Litigants can also use outing, or threats of outing, the other party to intimidate or undermine them, or bully them into agreeing to unfair fiscal arrangements concerning the marital home, or child custody arrangements. With sex work being subject to so much stigma and discrimination, sex workers being cross-examined on their occupational activities by the other litigant is another space where abuse through misuse of process may occur.

With women over-represented in sex work, and underpaid in many spheres, there is also a gendered aspect to misuse of process. Often women cannot afford the same level of representation as their male counterparts. Sex workers can be particularly vulnerable in this way, with fluctuating rather than set income. Protracted family court processes are also likely to be more significant for sex workers, as most are self-employed, or employed as sub-contractors, so are not receiving wages or leave entitlements while they are in court.

Some women report turning to sex work after their relationship breakdown occurs. Sex work can be one of the only jobs where, as a single parent, they can choose their hours so they can still shoulder the bulk of the child care, whilst earning enough income. To these women, having this work choice be used abusively in the family law system, is particularly distressing.

If this Family Law System Review made a strong statement that all of these behaviours are not acceptable - that sex work as an occupation does not, in and of itself, constitute children being at risk - we believe sex workers would be less vulnerable to misuses of process.

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Question 41: What core competencies should be expected of professionals who work in the family law system?

SWOP advocates strongly for sex worker sensitivity training to be delivered to professionals in the family law system at regular and repeated intervals. We also advocate for printed information to assist between training on how to behave when sex work is disclosed in family law settings. We would be happy to lend our organisational expertise to the drafting of this advice. This training and written advice would likely also be useful to judicial officers (Question 42) who may be required to use non-stigmatising language to refer to sex workers.

Question 45: Should s121 of the Family Law Act be amended to allow parties to family law proceedings to publish information about their experiences of the proceedings? If so, what safeguards should be included to protect the privacy of families and children?

Being outed as a sex worker can do considerable damage across numerous life-spheres, even in NSW where sex work has decriminalised for 23 years. It is our belief that sex worker litigants would be less likely to achieve justice if they were worried about being outed by the other party in published information about the proceedings. We would advocate for cases where sex work is raised should be kept private to afford the litigants safety. We would advocate even more strongly for this when multiple intersecting stigmas are present, for example for LGBTIQ, CALD or Aboriginal and Torres Strait Islander sex workers or people who do sex for favours.

Thank you for the opportunity to raise issues central to sex workers achieving the same access to justice as other litigants in the family law system. Should you require more information on regarding this submission, I can be contacted on +61 2 9206 2166 or by email: ceo@swop.org.au

Regards,



SWOP Chief Executive Officer

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