

## **Victims of Crime Commissioner - Submission on Victorian Government's *Discussion Paper: Decriminalising Sex Work***

Thank you for the opportunity to provide a submission to the Victorian Government's *Discussion Paper: Decriminalising Sex Work*.

I support a commitment to maximising sex workers' safety and health. Sex workers are at high risk of experiencing violence for multiple reasons, including unsafe working conditions. I also support evidence-based initiatives that will reduce risks of violence and exploitation of sex workers.

The Discussion Paper outlines the Victorian Government's approach to the review, noting that Fiona Patten MP undertook a review to make recommendations for decriminalising sex work (the Patten Review).

The Victorian Government has not publicly released the report from the Patten Review, yet has announced its decision to implement the review's recommendations.

At the outset I want to express my dissatisfaction and disappointment with the review process:

- the process has been a lost opportunity to transparently consider issues of violence and exploitation that sex workers experience in the industry and the most appropriate regulatory model to address these issues
- a comprehensive report should have been made public to outline the review process, the stakeholders consulted, the research and findings, the proposed model, and the rationale for the regulatory model to be adopted
- while the review was publicly announced in November 2019, stakeholders have only been given two weeks to consider complex and nuanced issues outlined in a high-level discussion paper.

Due to the time constraints, my submission is limited to high-level matters relating to victims of crime.

As Victims of Crime Commissioner, I advocate for laws, policies and programs that reduce the risk of crime occurring, as well as policies and programs that ensure appropriate justice and service system responses when crime does occur. Justice and service system responses should address the harm caused by crime, and reduce the likelihood of secondary victimisation by the criminal justice system.

In addition to other terms of reference, the Patten Review was expected to consider:

- the safety and wellbeing of sex workers, including the experience of violence that arises in the course of sex work and as a consequence of it, and worker advocacy for safety and wellbeing

- enforcement powers required to address criminal activity in the sex work industry, including coercion, exploitation, debt bondage and slavery.

Without a transparent approach to the research and consultation, it is not clear how the Patten Review assessed the safety and wellbeing of sex workers and their risks of violence and exploitation. The Discussion Paper concludes that the proposed new model intends to:

*regulate the sex work industry just like any other industry, by agencies such as local government, Worksafe and the Department of Health.<sup>1</sup>*

While this is an admirable objective, it is potentially naïve to hold other industries up as safe workplaces that can be replicated in the context of the sex work industry and its complexities of workplace safety. It is evident that many of the non-stigmatised industries referred to above cannot always provide a safe workplace for their workers. For example, recent public debate has demonstrated that high profile workplaces, such as the Australian Parliament,<sup>2</sup> and workplaces that are intended to protect the community, such as Victoria Police<sup>3</sup> and emergency services,<sup>4</sup> have not protected their workforces from discrimination and sexual harassment in their workplaces. The Discussion Paper provides no information about how sex workers' safety will be achieved through existing workplace regulation.

The Discussion Paper makes brief reference to other models of decriminalisation yet provides no detail on the extent to which other models were considered by the Patten Review.

Both New South Wales and New Zealand have decriminalised sex work and both jurisdictions have conducted reviews of their models of decriminalisation. The Discussion paper does not provide an indication of the extent to which the Patten Review assessed how Victoria might learn from these jurisdictions in recommending its new model of decriminalisation.

## **New South Wales**

- New South Wales decriminalised sex work in 1995
- a NSW Parliamentary Committee tabled a report in 2015 from its Inquiry into the Regulation of Brothels<sup>5</sup>

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<sup>1</sup> Victorian Government 2021, *Discussion Paper: Decriminalising Sex Work*, <https://engage.vic.gov.au/sex-work-decriminalisation>, Accessed on 27 August 2021, p.3

<sup>2</sup> <https://humanrights.gov.au/CPWReview>

<sup>3</sup> <https://www.police.vic.gov.au/veohrc-review>

<sup>4</sup> Recent media coverage has referred to concerns in Victoria's State Emergency Services, Ambulance Victoria and the government commenced a review of sexual harassment in Victorian workplaces: <https://engage.vic.gov.au/addressing-sexual-harassment-victorian-workplaces>

<sup>5</sup> NSW Select Committee Report – Inquiry into the Regulation of Brothels, 2015, <https://www.parliament.nsw.gov.au/ladocs/inquiries/1703/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brot.pdf>

- the Committee found that the system of decriminalisation of the sex services should remain because medical and other experts conclude that it provided favourable public health outcomes
- it also identified ongoing issues of organised crime, human trafficking, sexual servitude and exploitative work conditions in a decriminalised environment
- it also found that brothel owners do not always ensure a safe workplace
- the Committee found that the current legislative environment governing the sex services industry in NSW is contained in many pieces of legislation meaning that there is inconsistency in the definition of key concepts such as the meaning of 'brothel' and enforcement of the current laws is confusing and therefore difficult to implement
  - in response to this issue, the Committee recommended that while a model of decriminalisation should continue in NSW, it was important to review the various pieces of legislation that exist with a view to creating a Consolidated Act
- the Committee also recommended the decriminalised framework be modified to introduce a licensing system for most premises where sex work takes place, and in doing so, recommended the New Zealand model
- the Committee found that a licensing system would help solve identified problems in the industry—assisting the proper enforcement of planning laws, protecting sex workers from exploitation and danger, assisting to fight organised criminal elements in the industry, and ensuring that only fit and proper persons control and operate brothels
- it recommended the creation of a special Sex Services Industry Coordination Unit within the NSW Police Force; greater coordination between agencies; and appropriate investigation, entry, and enforcement powers for authorities in respect of brothels.

### **New Zealand Model**

- legislation passed in 2003 to decriminalise sex work
- the *Prostitution Reform Act 2003* removed police from having a regulatory role and allowed sex industry businesses to be covered by Workplace Health and Safety provisions
  - however, through the legislation, New Zealand does have a system of regulation in that operators of businesses of sex work must be licensed, and certain persons are disqualified from holding a licence
- there are anti sex slave provisions such that no visa issued to a foreign national may permit them to provide sexual services
- the legislation also contains provisions relating to health and safety, advertising, prohibitions on underage sex work and powers of entry and inspection of premises
- sex workers have the right to refuse to have sex with a client and cannot be fined for doing so
- the Act further protects sex workers by:

- allowing them membership of trade unions
- acknowledging employment contracts and legal contracts with clients
- ensuring the sex industry is covered by the Occupational Safety and Health agency and other relevant Government agencies
- reducing barriers to exiting the sex industry, for example by allowing immediate access to unemployment benefits
- the Act also provides for up to four sex workers to work together without requiring an Operator Certificate, provided no worker is in charge of the others. However, an Operator Certificate is required if more than four sex workers work together, including circumstances where no worker employs another.

### **New Zealand Review**

- in 2008 the Prostitution Law Review Committee in New Zealand reported on the operation of the *Prostitution Reform Act 2003* (NZ)<sup>6</sup>
- the Committee found that workers themselves felt more empowered about the job they were doing and had a greater understanding of their rights
- the committee also found that
  - some sex workers were being required to provide commercial sexual services against their will on occasion
  - adverse incidents, including violence, continue to be experienced by those in the sex industry
  - the social stigma surrounding involvement in the sex industry continued
  - written contracts between sex workers and brothel operators were rare, which creates difficulty in the enforcement of employee rights
  - there were strong disincentives for sex workers considering challenging brothel owners/operators in court.

In addition, it is not clear the extent to which the Patten Review considered findings and recommendations from relevant inquiries in Victoria (such as the Parliamentary Inquiry into People Trafficking for Sex).

### **Victoria**

- in 2010, the Parliamentary Victorian Drugs and Crime Prevention Committee reported on its Inquiry into People Trafficking for Sex<sup>7</sup>
- it proposed the introduction of an independent body to regulate and monitor all aspects of Victoria's sex industry (brothels, escort services and all other registered sexual service providers), including trafficking and sexual servitude, and to receive complaints of exploitative and unsafe working conditions

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<sup>6</sup> New Zealand Report of the Prostitution Law Review Committee on the Operation of the *Prostitution Reform Act 2003*, 2008

<sup>7</sup> Victorian Drugs and Crime Prevention Committee – Inquiry into People Trafficking for Sex Work, 2010, <https://www.parliament.vic.gov.au/assembly/publications-a-research/guide-to-presenting-petitions/send/34-committee-reports/13181-trafficking-final-full-report-with-cover>

- it proposed that the body could provide referrals to health, legal and social services and facilitate referrals to Victoria Police
- it also recommended approaches to victim support and support services.

While the Discussion Paper states that decriminalisation doesn't mean sex work will be deregulated, it is not clear what regulatory protections will be in place to ensure the health, safety and protection of sex workers in the industry.

Decriminalisation of sex work is one part of maximising sex workers' safety, health and minimising harm. The process of decriminalising sex worker in Victoria must encompass both legal and broader policy reforms. If decriminalisation is to achieve its aim of improving health, safety and reducing harm and exploitation, associated reforms must foster long-term systemic change in the industry, and the broader community, including having regard to gendered drivers of violence.

I urge the Victorian Government to consider the barriers those experiencing violence or exploitation in the sex industry may face in reporting their experiences of victimisation to police. It is vital that any model of decriminalisation explores the non-legal aspects of preventing and responding to violence and exploitation, including ensuring there are appropriate social supports, specialised services and improved law enforcement engagement strategies to increase sex workers' confidence to report crime.