

Victorian sex workers ‘paint the town red’ with decriminalisation and the end of STI and BBV criminalisation

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On the 22nd of February, Victorian Parliament passed the Sex Work Decriminalisation Act 2022, making Victoria the third jurisdiction in Australia to pass this kind of reform. It was only through the tireless advocacy of sex workers and sex worker peer organisations Vixen and Scarlet Alliance that this legislation was able to come into fruition. This reform is significant for sex workers both in Victoria and nationally and heralds the end of the discriminatory and dangerous licensing system that was established under the Sex Work Act 1994. Decriminalisation recognises and treats sex work as work, whereas licensing and criminalisation perpetrates state based violence and harm toward sex workers, especially towards marginalised parts of the community.[1] Vixen manager Dylan O’Hara stated that decriminalisation “is essential to recognising sex work as work and supporting sex workers, and is a crucial first step towards rectifying many years of harm and discrimination against Victorian sex workers.” [2].

Over the next 18 months, the Sex Work Decriminalisation Act 2022 will bring about many important and urgently needed changes that improve workplace health and safety, access to industrial protections, health, justice and safety for sex workers in Victoria. Crucially, the Act repeals the criminalisation of HIV and sexually transmitted infections (STIs) for sex workers and discriminatory mandatory testing and condom use

provisions. Criminalisation of sex workers with blood-borne viruses (BBVs) and STIs, mandatory testing and condom use laws violates our human rights and is state-sanctioned workplace discrimination. Those discriminatory laws are not evidence-based and are contrary to best practice public health approaches. Critically, in December 2023 the Act will fully repeal the problematic and ineffective Sex Work Act 1994, and fully dismantle the brothel and private worker licencing system. The Sex Work Act 1994 has violated sex workers’ rights to privacy and confidentiality, free choice of employment, just and favourable conditions of work, and equal protections and treatment before the law.

While the Sex Work Decriminalisation Act 2022 introduces many vital improvements for sex workers, the Act falls short of achieving full decriminalisation for all sex workers. In particular, the Act retains the criminalisation of street-based sex workers at certain times of day, in certain places, and on certain days. This means that important members of our community will continue to experience criminalisation, policing and discrimination, which means Victoria has not yet achieved full decriminalisation. Throughout this process, sex workers have been loud and clear that we will accept nothing less than the full decriminalisation of all forms of sex

work, for every member of our community.

The Victorian reforms highlight that governments can and do acknowledge the need for a shift in how sex work is regulated. The passage of the Act represented clear recognition that sex work is work, that the industry does not require exceptional laws and can be regulated like other businesses, and sex workers should be afforded the same rights and protections as other workers. Decriminalisation is a move away from moralistic and stigmatising models and affords us rights, health and safety.

Earlier in 2022, sex workers also welcomed the historic announcement that after many years as an unfunded, entirely volunteer led organisation, Vixen would be funded with auspicing by Scarlet Alliance, Australian Sex Workers Association, the national peak body for sex workers and sex worker organisations, to provide essential peer education, support, outreach, advocacy and representation for sex workers in Victoria. Funded peer-led sex worker organisations are essential for advancing the rights and wellbeing of sex workers because we are uniquely equipped to understand, support, and respond to the issues we face in our work and lives. Sex workers have advocated fiercely over many years for funding for a peer-led sex worker organisation in Victoria, as exists in most other states and territories in Australia. This will ensure

greater access to support, resources, services, and rights for all Victorian sex workers and is crucial to support the effective implementation of the reforms.

The history of the sex worker rights movement in Victoria is rich and layered. Sex work organisations have a proud history of advocacy for people living with HIV and have contributed to peer education that aims to destigmatise conversations around HIV and other BBVs. With the emergence of HIV in the 1980s, funding was provided to key communities at risk such as sex workers, gay, bisexual and other men who have sex with men, and people who inject drugs to form their own peer organisations. Building on the legacy of the Prostitutes Action Group (PAG, circa '78), the Australian Prostitutes Collective (APC, estab. '83) was funded in 1987 by the Victorian Health Department AIDS Prevention Program. This funding represented an acknowledgement that peer education delivered by sex workers provides the best possible health outcomes, reinforcing what we understand so clearly in the present – that sex workers are the experts in the management of our own health and wellbeing [3].

The APC eventually evolved into the Prostitutes Collective of Victoria (PCV) who were pioneers in sex worker organising. In 2001 the PCV was taken over by a community health service and it ceased being a peer-run organisation. Vixen Collective formed in 2005 to fill this space and launched at the 2005 Scarlet Alliance National Forum, gaining membership in 2007. Vixen Collective continued to engage in sex worker rights organising by building the participation of local sex workers in advocacy as well as working in collaboration with state and national peer sex worker organisations. Then in 2018, it was the sustained long-term efforts of Vixen Collective that saw the Victorian government adopt decriminalisation as its policy on sex work. Vixen continued to lead the campaign to decriminalise sex work in Victoria, and in collaboration with Scarlet Alliance has worked to keep sex workers' voices at the centre of the ongoing process, throughout the 2020 review, the 2021-2022 government process, and beyond. Vixen welcomes

the passing of the Sex Work Decriminalisation Bill 2021 but will keep advocating fiercely for the vital reforms to ensure that no sex workers are left behind. We cannot fully celebrate decriminalisation of sex work unless it is decriminalisation for all of us.

Sex workers know better than anyone that licensing and criminalisation do not work, and we have long advocated for full decriminalisation. In Victoria, licensing created a two-tiered sex industry where only a small percentage of sex workers and businesses are able to meet the discriminatory and onerous compliance requirements, forcing many sex workers and businesses to operate outside the legal framework. Due to the staged roll-out of decriminalisation, this misfit of law and participation will continue until stage two of the reforms take effect in December 2023.

Licensing has meant that criminalisation and fears associated with policing and other forms of surveillance by the state have coloured everyday life. This also meant that there have been significant barriers to accessing essential services such as targeted health and support programs. In contrast, decriminalisation and a funded sex worker organisation will afford sex workers rights, health and safety. This can only ever be achieved with full decriminalisation, without any additional legislation aimed at surveilling sex workers, especially by the police [4]. Importantly, decriminalisation does not mean no regulation - rather, it means whole-of-government regulation where sex work is treated like any other form of labour, falling under broader general regulatory mechanisms such as local council planning or industrial rights obligations [5].

The system of licensing and criminalisation established by the Sex Work Act 1994 also made it an offence to allow a sex worker with an STI (including HIV) to work in a brothel, escort agency or other business [6]. Before 10 May 2022 sex workers were required to attain quarterly sexual health testing certificates, significantly increasing the stigma attached to doing sex work while living with HIV and other STIs and BBVs. The decriminalisation of sex work is a pragmatic law reform that works to uphold intrinsic human rights

and workplace occupational health and safety [7].

Indeed, criminalisation is based on stigma rather than evidence and it exacerbates the conditions that fuel the spread of HIV and other BBVs which thrive when communities are unable to access peer support and education [7]. A monumental win for the sex worker rights movement has been the removal of penalties for sex workers living with HIV and other STIs and BBVs. As of 10 May 2022, it is no longer an offence for sex workers in Victoria to work with a sexually transmitted infection (STI) or blood borne virus (BBV).

It is well established that eliminating stigma and discrimination against sex workers and sex workers living with HIV and other STIs and BBVs can only be achieved through decriminalisation [5]. Law reform of this kind is critical to build a more equitable society and will work toward combating the global HIV epidemic [7]. Discrimination against anyone, sex worker or not, living with an STI, HIV or BBV, is unacceptable and creates access barriers to testing and treatment. We should not be criminalised, rather, an evidenced and peer-based approach to managing sexual health should be championed for its proven efficacy [8]. Sex worker peer organisations such as Scarlet Alliance and Vixen, in allyship and solidarity with organisations like Living Positive Victoria, have established that decriminalisation of sex work also helps foster an environment where sex workers and other people living with HIV can more effectively advocate for their health, needs and rights. Decriminalisation acknowledges that the policing of consenting adults and our bodies, including sexual health, is outdated and archaic.

As CEO of Living Positive Victoria Richard Keane says "It recognises and builds on tangible outcomes of biomedical advances in HIV treatment and reinforces the 'facts' in law that a person living with HIV who maintains an undetectable viral load cannot transmit HIV to their sexual partners (U=U Undetectable=Untransmittable). There have always been a small number of people living with HIV engaged in sex work, but historical legal frameworks

have meant that...most were isolated with barriers to disclosure within the workplace.”

With the repeal of discriminatory mandatory testing and mandatory condom requirements, and an end to the criminalisation of sex workers working with STIs and BBVs, sex workers can now manage our own sexual health without fear of criminalisation, police enforcement or invasive mandatory testing requirements.

It is important to note that mandatory testing and condom use and the criminalisation on STIs and BBVs was never about supporting sex workers and our sexual health. Instead, it was about stigma and surveillance of our communities. Evidence has repeatedly shown that sex workers have lower or comparable rates of BBVs and STIs when compared to the general population, and high rates of voluntary condom use, which can be credited to sex worker activism and peer education [9]. Sex workers are not ‘vectors of disease’. Rather, we have proven time and time again to be safer sex experts.

The criminalisation of doing sex work while living with HIV or other BBVs and STIs is discriminatory, stigmatising, and not supported by evidence. HIV and STI criminalisation violates sex workers’ rights to privacy and confidentiality, free choice of employment and equitable work conditions, and equal legal protection and treatment. It forces sex workers living with HIV to operate covertly, creating barriers to accessing essential targeted health and support services and to accessing police assistance. Fear of criminal investigations and confidentiality breaches creates barriers for sex workers to disclose their HIV status, reducing health professionals’ ability to comprehensively assess health needs. HIV criminalisation compromises medical confidentiality, making it more difficult to roll out targeted HIV responses to sex workers living with HIV.

Furthermore, mandatory testing is not supported by evidence, is costly and produces no tangible benefits to sex workers and instead harms the community through diverting resources away from people who need to access

sexual health testing the most [10][11]. Mandatory testing is considered a rights violation by a number of international human rights organisations including the United Nations Human Rights Office of the High Commissioner for Human Rights and UNAIDS. Mandating condom use and punishing noncompliance through criminal law is based on stigma and the assumption that sex workers are not equipped to practice safer sex practices. Mandatory condom use requirements are inconsistent with the aims and spirit of decriminalisation and serve only to undermine its positive impacts by continuing to single out and stigmatise sex workers while retaining police as regulators and creating punitive barriers to effective peer education and health promotion.

‘Nothing about us, without us’ means that sex workers shape the process of law reform and that the voices of sex workers are centred in decision making. Vixen and Scarlet Alliance, through extensive community consultations, worked alongside the government to ensure that this occurred.

Disappointingly, full decriminalisation of sex work was not achieved [12] but through strong leadership by sex workers and positive collaboration with sex workers and sex worker organisations, the Victorian Government has achieved significant reforms that will deliver important outcomes for sex workers, and Vixen will continue to campaign for further reforms. This historic moment will help pave the way for other states and territories and will help set important precedents regarding how sex workers are positioned and treated in society.

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