



GENDER  
EQUITY  
VICTORIA

# GEN VIC submission to the Inquiry into the decriminalisation of sex work

July 2020

## Endorsing Organisations



## About Gender Equity Victoria (GEN VIC)

Gender Equity Victoria (GEN VIC) is the peak body for gender equity, women's health and the prevention of violence against women in Victoria. Our vision is for equality, wellbeing and freedom from violence for every woman and girl, in every community of Victoria.

GEN VIC represents individual and organisational gender equity leaders across Victoria who advance gender equity and hold values that align with feminist principles. Our current membership reaches every region and community in Victoria. We value our public, private and community sector membership.

GEN VIC recognises gender as a key determinant of wealth, power and status in society and therefore one of the most powerful drivers of health inequities, hate and violence. We advocate, influence and collaborate to improve outcomes in gender equity, women's health and in the prevention of violence against women.

GEN VIC performs a number of key functions in that we:

- support Victoria's gender equity industry with training and professional development
- ensure women's voices are integral to policy, legislation and services
- deliver evidence-informed gender equity and women's health and wellbeing projects and activities;
- facilitate collaboration and partnerships between Victorian women.
- Celebrate gender equity in Victoria

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### What is gender equity?

- Gender equity is a journey and a destination.
- Gender equity is fairness and justice for all people in family, community, workplaces, the economy and public policy.
- Gender equity is people reaching their full potential regardless of sex or gender.
- Gender equity is people of diverse and different needs thriving without barriers.
- Gender equity is a future where opportunity is genuinely equally available to all.

### For all women

- We're focused on achieving gender equity for anyone who identifies as a woman or experiences discrimination, harassment and oppressions that come from sex and gender stereotyping.

## Executive Summary

GEN VIC welcomes the opportunity to contribute to the Inquiry into the Decriminalisation of Sex Work in Victoria, led by Fiona Patten MP, to make recommendations for the equality, health and safety of Victorian sex workers.

In this submission GEN VIC supports:

- **The voices of peer-led sex work organisations** to ensure that sex workers' rights to health, safety, inclusion, justice, freedom from police and state violence, discriminatory laws and policies are protected and enshrined in legislation. GEN VIC recommends that the Inquiry works in partnership, in first instance, with peer-led sex work organisations throughout the process of legislative reform. Our submission is informed by the advocacy of our member organization, the Vixen Collective.
- **Prioritization of health and safety of sex workers** to ensure those women and gender diverse people who undertake sex work do so freely, without coercion and in a clean, safe and violence free environment. Our submission is informed by the research of our member, Women's Health Victoria.
- **A feminist, human rights and worker-centred approach to sex work** that emphasizes self-determination and choice, consent and collective organizing consistent with the principles of our organization and its membership.

## Background

### **Criminalisation of sexual activity – sex work in historic context.**

Victoria, like most western nations, has a history of criminalising types of sexual and reproductive activity. Until very recently, the Victorian Statute books contained laws against homosexuality, sex outside of marriage and abortion. These laws were based on sex and gendered stereotypes and biases, informed by strict religious teachings which sought to control freedom, choice and pleasure over the body.

Today, thanks to decades of advocacy and education, social mores about sex, sexuality, gender diversity and reproduction have changed and with them, Parliament's support for the criminalisation of sexual activity.

The partial legalisation of some types of sex work and criminalisation of other types is therefore a statutory oddity, no longer consistent with other statutory changes which have decriminalised most forms of sexual activity.

### **Poverty, gender inequity and the commodification of sex**

Sexuality is a human right – the opportunity to engage in consensual sexual acts and relationships with other individuals is part of what makes us human. While most sexual activity

exists outside of mercantile exchange, for some human beings the only access they have to sexual activity is through payment.

Consensual sexual services are sought by a range of people in our community. People with disabilities, injuries and terminal illness, people educating themselves about sex and sexuality and people without partners in need of regular sexual relief, choose to pay for sexual pleasure rather than attempt to navigate dating sites such as Tinder.

While GENVIC accepts that there are gendered issues associated with the commodification of sex, sexuality and gender, which we explore further in the submission, we accept that the sex market in Victoria exists and is growing. Prostitution, often referred to as the oldest profession, is not going anywhere soon and attempts to diminish its practice through criminalisation and incarceration have been a spectacular policy and legislative failure.

The criminalisation of sex work – where the vast majority of women are workers – is further economic punishment of women in circumstances where they already face significant economic inequities.

Sex work is often the last refuge of women facing poverty caused by layers of gendered disadvantage. Persistent gender pay and superannuation gaps, the de-valuing of women-dominated industries such as teaching, early childhood education, care work and cleaning, the low levels of single parent payments and failure of the social security system, the concentration of men in high-paid decision-making positions and ongoing sexual harassment and discrimination in the workforce contribute to making the private sale of sex a lucrative opportunity for some women.

Women sex workers should not be penalised further for entrenched gender inequities of the market. GENVIC recognises for some women, sex work is an opportunity to lift themselves out of poverty and homelessness; to pay for fees for further education in other industries and to build a life for themselves and their children.

### **A safe, regulated and gender equal industry**

This review presents an opportunity to bring health, safety and wellbeing to the centre of sex work regulation in Victoria, so that the men, women and gender diverse people who choose freely to work within it, can do so safely with the benefit of the usual workplace protections we have come to expect of our State.

A sex work industry in Victoria should be safe, lawful and gender equal.

## **What needs reform?**

### **We have a sex work licensing system that's failing**

The partial legalisation of some types of sex work and criminalisation of others, through a licensing system in Victoria has resulted in a two-tiered sex industry, where some people are employed legally through licenced brothels and escort services, with access to workers' rights

and protections, while others - such as people in unregistered brothels or working on the street - have no workplace protections forcing them to work in physically dangerous circumstances, risking criminal convictions and a cycle of violence, poverty and further crime.

The current licensing system for regulating the Victorian sex work industry is failing women. We know that many Victorian women in the industry are prevented from accessing the criminal justice system to report crimes experienced on the job, due to their own fear that they will be charged with a crime.

Women who are charged with a crime of unlicensed sex work in turn have criminal records which affects future job opportunities in different industries. Street based sex workers in particular are subject to the harshest policing, full criminalisation, and are among the most vilified, visible, and misunderstood of sex workers.

We know that street-based sex work can affect some of the most vulnerable Victorian women, forcing them to operate covertly and in dangerous situations where they do not have any protections afforded to them.

Further, sex workers who are being underpaid currently have no recourse through Fair Work or the capacity to take other industrial action due to the criminalisation sex work.

The vulnerability of sole sex work operators has been exposed by the COVID19 pandemic, where significant numbers of sex workers have been unable to engage in their regular business while also being ineligible for JobKeeper payments or any federal supports.

### **We're not listening to sex workers**

Victoria has a peer-only sex worker organisation named Vixen Collective. Vixen Collective is an unfunded organisation made up of current and former sex worker staff, and is the credentialed Scarlet Alliance, Australian Sex Worker Association member organisation for Victoria. Vixen engage in ongoing and active consultation with Victorian sex workers; peer education and peer support to the Victorian sex worker community; education initiatives with the broader, non-sex worker community and fight against stigma and discrimination of sex workers.

Because of the licensing system regulating sex work, which includes the criminalisation of street-based sex work, government's health model within the industry has prioritised funding projects which support women to get out of sex work, rather than improve health and safety within it. Criminalisation has contributed to paternalism and parentalism; with the infantilising of women sex workers who choose to practice sex work, thereby excluding them from opportunities to co-create a safe, gender equal and lawful industry. This has also had the effect of creating stigma and discrimination of sex workers.

GENVIC acknowledges that there will always be a need to assist women and gender diverse people to transition out of sex work where they wish to and need support to do so, as well as ensuring that there are programs to end non-consensual sex work and trafficking of women.

However, such programs should sit side by side funding for peer-based, sex work organisations like the Vixen Collective, the credentialed Scarlett Alliance Australian Sex Worker member organisation for Victoria.

We are particularly concerned to ensure that projects for migrant and refugee women where there is a high risk of control, coercion and trafficking are funded and supported appropriately with peer-based sex worker expertise. There should be properly-funded, peer-led, in-language health and safety programs delivered to sex workers in their workplaces.

### **3. There's a lack of alignment of the sex work industry with the State of Victoria's strategies against gendered violence and for gender equity**

We adopt all of Women's Health Victoria's observations about the need for the sex work industry to be explicitly integrated into existing strategies and programs for preventing violence against women and to develop tailored prevention programs adapted to the sex work context.

## **GenVic Recommendations**

### **Recommendation 1: The Victorian Government work in partnership with peer-led sex work organisations throughout the legislative reform process and fund peer sex work programs, projects and organisations.**

It is essential that women's voices in the sex industry drive reforms to the industry. The safety of workers should be paramount to change. The review should be focussed on protecting workers as its primary motivation, centring its reform to ensure safe, healthy sex work practice.

Further, self-determination, consent and choice needs to underpin the way in which government listens and funds sex work health and safety.

### **Recommendation 2: Decriminalise all forms of sex work**

Prohibiting sex work exacerbates harm of women. We endorse the observations made by the Vixen Collective that decriminalisation is the preferred policy response to sex work by human rights agencies around the world such the United Nations, UNAIDS, UNFPA, UNDP, Amnesty International, International Labor Office (ILO), World Health Organisation and Global Alliance Against Trafficking in Women.

We endorse the view that criminalisation and incarceration does not help women engaged in sex work but instead locks them in a cycle of crime and poverty. Further, the current licensing system is inconsistent and heavy handed, resulting in high levels of policing and artificial tiers of lawful and unlawful sex work which in turn leads to higher than necessary non-compliance and criminality across the industry. Poor policy and legislative settings are a danger to women's health and safety.

Criminalisation impinges on human rights of liberty and security, freedom from discrimination and the right to health and safety in working conditions. In Victoria we have developed a two-tier form of legalisation, which grants rights to one class of sex workers working in registered

brothels or escort agencies, while removing all rights from another class of women who work in unlicensed brothels and escort agencies or on the street.

Even for sex workers working in compliance with current legislation, onerous and discriminatory provisions, which require registration of all workers legal name and sex worker status with government for life - even if they leave the industry – is a breach of human rights. Not unsurprisingly, the invidious choice between heavy handed compliance, exposure to fines and a lack of autonomy contributes to some sex-workers choosing to practice non-compliantly and all of the risk and negative impacts that flow from that decision.

It denies the human rights of an underclass of women in the sex work industry and creates unsafe work conditions, stopping them from asserting any legal rights for fear of punishment.

It is the position of GEN VIC that full decriminalisation of all forms of sex work is the only legislative option for the Victorian Parliament to pursue to keep Victorian women safe and their rights protected in the sex work industry. We recognise that the sex work industry should be treated as any other industry, granting workplace rights and protections at work, the right to engage in industrial activities, the right to be free from unlawful discrimination, and right to be free from undue influence or pressure in negotiating individual agreements.

Alongside workplace rights, women who are sex workers should have the right to access the criminal justice system in response to violence perpetrated towards them in the course of their employment. Women who are sexually and/or physically assaulted currently do not feel safe to contact the police for fear that they will be charged for working without a proper license and the risk this poses to future career prospects should they end up with a criminal record. Women should always be able to approach police to prosecute against sexual and physical assault because it makes them safer – and makes everyone safer in turn.

### **Recommendation 3: Women with HIV status should be legally able to work in the sex industry with appropriate health safeguards and disclosures**

Workers with HIV are criminalised in the sex industry and are prohibited from working for an establishment that is licensed. Criminalising sex workers with HIV and other STIs:

- forces women to operate covertly, into more dangerous situations
- creates disincentives for all sex workers to test for HIV as a positive status as it could mean that they are no longer able to be legally employed
- Creates barriers to support in the health system.

While there should be regulations in place that promote appropriate health safeguards and disclosures in the sex work industry as a matter of Occupational Health and Safety, criminalising women with HIV has larger implications for the safety of women and the industry as a whole. We support our members, Positive Women, in ensuring women with HIV are not stigmatised in any industry in which they work.

### **Recommendation 4: Regulation of sex work advertising to safeguard against sexist advertising**

Sexist advertising objectifying women is directly correlated to a culture of violence against women. Our member organisation, Women's Health Victoria, is currently working with the advertising industry to improve the representation of women in advertising. Their work is based on research that demonstrates the link between the sexualisation and objectification of women in advertising and attitudes and behaviours that support violence against women.

GEN VIC's supports and adopts the position that the Sex Work industry must also comply with advertising reforms that regulate sexist advertising.

### **Recommendation 5: Align the sex work industry with strategies against gendered violence and for gender equity**

We adopt all of Women's Health Victoria's observations about the need for the sex work industry to be explicitly integrated into existing strategies and programs for preventing violence against women and to develop tailored prevention programs adapted to the sex work context.

### **Recommendations 6: Ensure adequate funding for gender equity and get gender equity investment Back on Track in women's health**

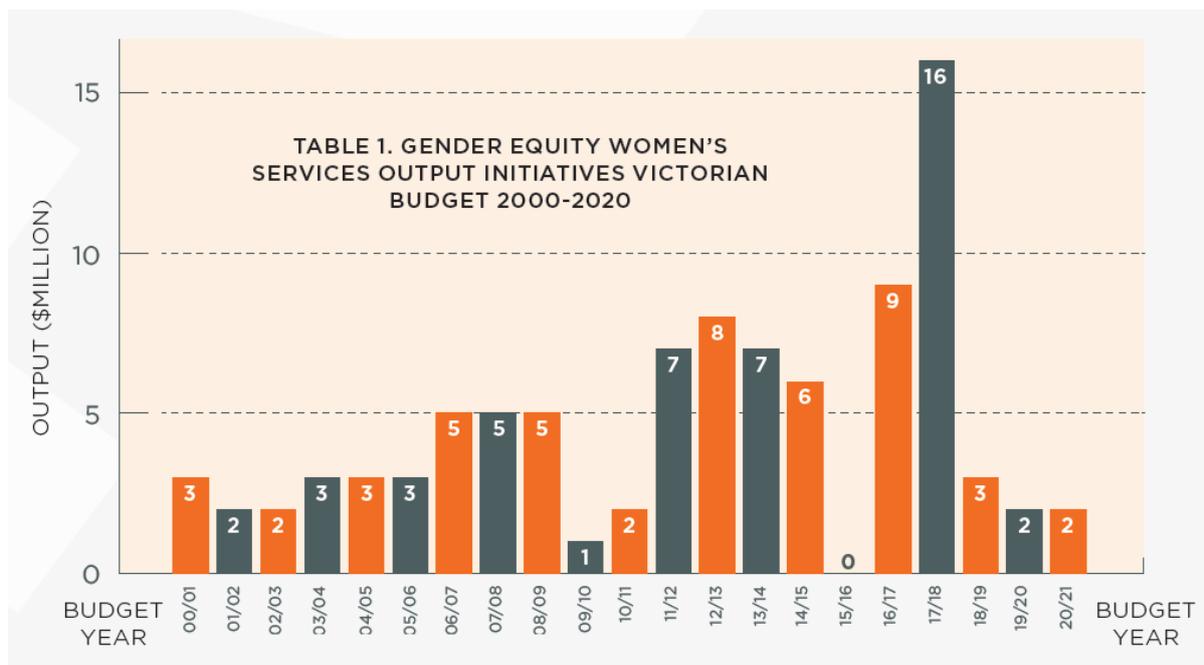
Gender inequality is a major influence on women's entry into sex work. Improving economic opportunities for women, gendered job creation and inequities in social security, single parenting payments and public housing would diminish the numbers of women who enter the profession less than freely out of economic desperation or through coercion by pimping partners.

As long as there are economic barriers to women, women will look to sex work to put food on the table. The COVID19 pandemic has exposed how vulnerable women workers are in an economic downturn with the fulltime unemployment rate of Victorian women much higher than that of Victorian men.

The Government's leadership in creating a *Gender Equality Act* in Victoria provides an opportunity to address gender equity in the public sector, setting the groundwork for longer term change.

GEN VIC's position that legislative reform is accompanied by further investment in gender equity in Victoria. Australia's global gender gap has grown significantly over the past twenty years, with Australia subsequently moving from 15<sup>th</sup> to 44<sup>th</sup> on the World Economic Forum's Global Gender Gap Index.

In Victoria we have tracked the Victorian government's investment in gender equality across the past decade, and investment has suffered from the absence of focused analysis and advocacy. With the exception of recent investments in family violence prevention, programs and services that empower women, seek to address women's economic insecurity, other forms of gendered violence and the unequal health consequences of inequality have been exceptionally modest (see Table 1 below).



To correct historic underinvestment in gender equity, GEN VIC calls on the Victorian government to increase its 20/21 Budget to \$21.6M to Strengthen Gender Equity in the Community and to Boost Women’s Health Services.

The following principles explain why it’s important to get gender equity investment Back on Track:

1. To deliver economic returns and other benefits to the Victorian State Budget
2. To increase Victoria’s gross domestic product
3. To meet international best practice in promoting gender equality and violence prevention
4. To invest in women across the life course approach and addressing intersectional inequity
5. To include both base operational and special projects funding for gender equity
6. To align to the Victorian Gender Equality Strategy
7. To promote transparency and accountability through gender responsive budgeting
8. To monitor investment annually against outcomes in an independent Victorian Gender Equity Report.

**Recommendation 7: The collection and analysis of sex and gender disaggregated data collection on the sex work industry.**

To keep sex workers safe, Victoria needs a better understanding of the numbers and demographics of the industry, particularly the intersectional breakdown of cohorts of workers. For example:

- How many migrant, aboriginal, LGBTIQ, disability, rural and regional workers are in the industry?
- In relation to migrant and refugee women, what countries of birth, languages spoken, visa category (including undocumented) are known?