



Review into Decriminalisation of Sex Work Submission City of Port Phillip

July 2019

Introduction

The City of Port Phillip congratulates the Victorian Government for undertaking this a Review into Decriminalisation of Sex Work and welcomes the opportunity to provide a submission.

The City of Port Phillip (CoPP) has demonstrated, for many years, a long term commitment to improve and protect the health and wellbeing of our people, and our current Council plan seeks to secure outcomes for a City that embraces difference, and where people belong.

City of Port Phillip

CoPP is located in Melbourne's inner southern suburbs between two and eight kilometers from the Melbourne CBD. Port Phillip is made up of nine neighbourhoods and includes the suburbs of Albert Park, Middle Park, Balaclava, St Kilda East, Elwood, Ripponlea, St Kilda, St Kilda West, Port Melbourne, South Melbourne and parts of the new Fisherman's Bend Urban Renewal Area.

The CoPP has a diverse community with an estimated resident population in 2019 of 115,601 people. Port Phillip's population is expected to grow to more than 168,549 people by 2041, a significant 45.8 per cent increase from the 2019 estimate.

Response to Consultation Questions

Question 1. Should there be any suitability requirements for operators and managers of brothels and escort agencies, and if so, what should these look like.

Council has chosen not to respond to question number one.

Question 2. Should there be any requirement for private sex workers?

Council has chosen not to respond to question number two.

Question 3. What planning/zoning requirements should apply to sex work premises and working from home?

- Under decriminalisation, sex work would be legal employment and therefore, be subject to industrial regulatory mechanisms.
- The existing regulatory mechanisms for where legal sex work occurs in Victoria are administered under the *Sex Work Act 1994*, with the planning scheme supplementing the Act when a new brothel is proposed. This allows council to consider amenity matters from a planning perspective.
- The Sex Work Act 1994 establishes the appropriate location and operation of brothels, and requires them to be located away from schools, hospitals, places of worship, and places that children frequent.
- Should home based sex work be decriminalised, a review of planning requirements in Victoria would need to be undertaken to ensure that home-based sex work occurs in appropriate locations consistent with the locational criteria that applies to brothels.
- Council request that the Victorian Government pay specific attention to impact of decriminalisation on street based sex work. Street based sex work is complex and often involves vulnerable members of the community. The alignment of street sex work to footpath trading does not address decriminalisation but rather shifts the onus of compliance from criminal behaviour monitored by Victoria police to a compliance matter to be monitored by local government. Council would not support such a proposal
- Footpath trading permits would not be a suitable mechanism to manage street-based sex work as a high proportion of these individuals may not have the capacity to apply for a permit, plus maintain the conditions. Penalties for non-compliance would create greater hardship and penalty for marginalised people.

Question 4. Does the legal definition of 'sexual services' need to be updated to clarify what is sex work in Victoria?

- Currently, the term of 'massage' is not included into the definition of sexual services. Under current laws, a sexual service which is offered as part of a massage service is deemed a sexual service. If sex work is decriminalised, then the distinction between massage services with or without a sexual service would no longer be an issue, as all forms of sex work between consenting adults would be lawful.

- Council has seen a proliferation of “massage parlours” which effectively operate as unlicensed brothels, because they provide sexual services.
- Council’s view is that all businesses that employ people to provide sexual services should be subject to the same legal and regulatory requirements, regardless of what name they use to describe their services. This includes compliance with occupational health and safety laws, employment law and any planning or licensing requirements
- Council supports consideration as to whether broadening the definition of sexual service might assist as part of an approach to ensure sole traders and businesses that employ people to provide sexual services comply with all legal obligations.
- Council welcome a review of the legal definition of sexual services which provides an opportunity to consider the inclusion of the term ‘massage’. This would ensure authorities are provided with the scope to investigate unregistered sex service providers, whilst ensuring public health and neighbourhood amenity.
- It is Council’s belief that decriminalisation of sex work, plus clear definitions of sexual services, would remove the ambiguity associated with massage parlours and would support compliance around the Sex Work Act 1994.

Question 5. How should a decriminalised model address safety and community amenity issues relating to street sex-based work?

- Safety is determined by a range of complex environmental, social, and economic factors. No one organisation / authority can solve complex safety issues in isolation. The City of Port Phillip works collaboratively continually with the police, community service organisations and residents to improve safety of our community. As demonstrated in the *Community Safety Plan 2019 – 2023*, Council supports the safety of the most marginalised community members including sex workers.
- As street-based sex workers face a much greater risk of being the victim of violence than brothel workers due to street-based sex workers not having an established venue of work. Criminalisation of sex work incentivises workers to not report violence to police.
- The key safety issues that impact street-based sex workers relate to violence including murder, rape and sexual assault. There are also occupational safety issues related to sexual health.
- Council believes that laws that criminalise street-based sex work have meant that street-based sex workers are less likely to report violent crimes perpetrated against them, because they have been engaged in work that is deemed criminal. Criminalisation has also

meant that street-based sex workers operate in areas where there is less risk of being detected. These areas are poorly lit and with fewer people around.

- Decriminalisation would remove the disincentive to report crime. Council believes that it would also allow for more positive policing arrangements to better protect the safety of street-based sex workers.
- A decriminalised industry would require Council to work with street-based sex workers, their advocates, and police to consider the impact and cost of designing safer locations through Crime Prevention through Environmental Design (CPTED). When CPTED is applied to street sex work, the emphasis is on making the environment safer for communities as a whole, and achieved through addressing issues of nuisance, traffic, noise, litter and intimidation, not the elimination or displacement of street sex workers.
- Council requests that State Government supports and resources transparent communication and consultation methodology when designing a decriminalised sex work industry. This is especially pertinent in relation to street-based activity.
- Council requests the State Government approach this from the sex workers' human rights perspective.

Question 6. What measures are needed to promote workplace safety and wellbeing in the industry for sex workers.

- Decriminalising of sex work would significantly reduce the health and safety risks
- Sex workers should be afforded the same rights and protections as any other employees, including the right to join and form unions and to be covered by relevant employment law.
- Decriminalising of sex work would significantly reduce the health and safety risks including unsafe sex practices that some sex workers currently face. In addition, sex workers would have better access to state apparatus such as WorkSafe Victoria and the Fair Work Ombudsman
- Given that many sex workers face discrimination, violence and stigma, additional support will be required to support their safety and wellbeing until such time that those engaged in sex work can form and adequately resource their own associations.
- Additional resourcing will be required for services like Resourcing Health and Education (RhED) and Gatehouse which provides a range of advice and support services for people engaged in sex work.
- Decriminalisation will mean that these peer services will require additional support to inform workers of the changed environment and their rights, liaise with police, health

authorities and local government to establish policies, programs and protocols to improve safety and well-being of sex workers and the community.

- Currently, street-based sex workers' safety is placed at risk as they must prioritise evasion of authorities over safety strategies. This approach limits the ability for sex workers to safely screen clients and negotiate their services.
- Existing laws covering violence, robbery, fraud, sexual assault, harassment, etc already exist but when criminalisation is lifted, sex workers can access the protections of these laws without fear. Decriminalising the sex industry would encourage staff to cooperate with law enforcement authorities with regards to suspected criminal behaviour.
- Council recommends that the Victorian Government considers establishment of an initiative similar to the New South Wales' Sex Worker Outreach Worker Project. The initiative provides a supportive, non-judgemental environment for sex workers to report acts of violence against them to law enforcement. Sex worker liaison officers are police officers specifically trained to deal with issues raised by sex workers.

Question 7. What could be done to address social stigma or discrimination against sex workers?

- A decriminalised system amplifies opportunities for outreach, peer education, supports sex worker self-determination by community service organisations, and directly respond to matters of discrimination.
- Decriminalisation is fundamental to reducing social stigma and discrimination against sex workers. It is difficult to remove discrimination and stigma against people engaged in an act deemed to be a crime. This was the case with homosexuality; decriminalisation was a necessary first step towards removing discrimination. Research from the Centre for Global Development reports that changed (increased positive) attitudes to homosexuality often follow and are caused by decriminalising homosexuality.
- Decriminalisation of sex work creates a more favourable relationship with law enforcement where sex workers are more inclined to report violence and ensures sex workers enjoy the full protection of the law..
- Council request the Victorian Government support ongoing conversations with community to dispel the destructive stereotype and stigmatisation and ensure the broader community understand the nuances of a decriminalised industry and the potential implications for local neighbourhoods.

- Additional financial resources should be provided by State Government to community service organisations to lead the conversations addressing social stigma against sex workers.

Question 8. What laws do you think are needed to promote and protect public health under a decriminalised model?

- The construction of a supportive legal and policy framework to protect people with HIV and key populations at risk of HIV, including sex workers, against human rights abuses and discrimination has been central to Australia's successful approach to HIV. This approach has now been adopted globally, including by UN AIDS and the World Health Organisation.
- Laws which created a supportive environment for people at risk of HIV mean that people were more likely to come forward for testing and to seek treatment. The result was that HIV prevention, care and support strategies targeting each community are therefore more likely to be effective.
- Decriminalisation of sex work and homosexuality as means of improving public health were recommended by a number of key HIV/AIDS Advisory bodies going back to the 1980s.
- Council recognises that criminalisation of sex work continues to pose a significant threat to the health and wellbeing of people engaged in sex work, including those who are most marginalised.
- The decriminalisation of street-based sex work would enable a harm minimisation approach as it would empower sex workers to report crime and monitor their health. It would also enable workers to access mainstream supports including advice regarding health.
- Anti-discrimination legislation remains necessary to protect discrimination against sex workers. Council favours a legislative environment that supports a rights-based approach to sexual health, and occupational health and safety. Such an approach reduces stigma and other barriers to people accessing prevention, testing, treatment, care and support services.
- Council supports freedom of movement, equal dignity and safety and security of individuals and community. Any new regulations should balance private rights with the public health interest in an ethical and transparent manner.
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Question 9. Which parts of government should be responsible for compliance and enforcement of sex work regulation, and what powers would they need?

- At present in Victoria, sex work is regulated primarily by the *Sex Work Act (1994)*. The licensing system is administered by the state government, through Consumer Affairs Victoria, and with the registration/licensing of sex workers, managers, and sex industry businesses by the Business Licensing Authority. Local government have the responsibility related to planning controls, while Victoria Police fulfill the enforcement role.
- Decriminalisation would necessitate a different regulatory framework to the above. Councils' view is that regulation should be the same as for other legal businesses, unless a case can be made for specific regulation in relation to sex work.
- Notwithstanding decriminalisation of sex work, to ensure appropriate location of brothels and sex work, local government as the planning authority must be retained to ensure that sex work is appropriately located and authorised pursuant to a planning permit.
- Council would be concerned if there was a shift in responsibilities for regulation of sex work from state government authorities to local government.
- Council supports the current division of roles and responsibilities associated with compliance and enforcement of the sex industry with various state government authorities which draws on their respective expertise. Council would be concerned if there was a shift in responsibilities from state government authorities to local government.

Question 10. What else should be done to address businesses that do not comply with decriminalised laws?

- This would depend on the laws. It is reasonable to assume that decriminalised laws would not be criminal laws, so enforcement would rest with the relevant enforcement agencies and not with the police. This could be planning laws, local laws, any relevant local laws, workplace health and safety laws, consumer protection laws, licensing regulation and industrial relations.
- Where it is established that there is a case for additional or supplementary regulation for sex work, beyond standard occupational, planning, health and consumer laws, the enforcement should rest with the relevant authorities.

Question 11. Are the existing criminal offences in the Crimes Act and the Sex Work Act regarding non-consensual sex work adequate? Is anything else needed to address exploitation or non-consensual sex work?

- Council has chosen not to respond to question number eleven.

Question 12. How should sex work advertising be regulated?

- Advertising sex work is complex and governed by both the Sex Work Act (1994) and Sex Work Regulations (2016). Existing regulations ensure that advertising is not exploitative or degrading. It also restricts the types of photographs used, the size of images as well as the wording. Enforcement is the responsibility of Consumer Affairs Victoria.
- Council supports robust legislation be adopted to ensure that community is protected from advertising that exploits, degrades or vilifies a person or section of the community on account of race, ethnicity, nationality, gender, age, sexual preference, religion, disability, mental illness or political belief.

Thank you for the opportunity to make this submission. Enquiries and requests for further information should be directed in the first instance to XXX