

Sex Work Law Reform Victoria Inc. (Equality. Safety. Justice)

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Investigation into the timeliness of Freedom of Information in Victoria
Office of the Victorian Information Commissioner
PO Box 24274
Melbourne
VIC 3001

By email: investigations@ovic.vic.gov.au

12 October 2020

Dear OVIC,

Sex Work Law Reform Victoria Inc. (SWLRV) is an advocacy group led by sex workers, lobbying for the legal rights of sex workers in Victoria.

We appreciate this opportunity to contribute to the investigation into the timeliness of Freedom of Information in Victoria. Our submission outlines our experiences with delays in processing FOI requests made to the Department of Justice and Community Safety.

Sincerely,

Lisa Dallimore

Sex Work Law Reform Victoria President

Executive Summary

Volunteers with Sex Work Law Reform Victoria have encountered delays processing freedom of information requests made to the Department of Justice and Community Safety.

Recommendations

We suggest the following could help improve timeliness in FOI practices.

Recommendation 1

The Victorian Government to provide more resources and more staff to the FOI Unit within the Department of Justice and Community Safety.

Recommendation 2

OVIC and external trainers to target training of agency staff where it is identified that there is a need for re-engagement with FOI principles, in particular, poor timeliness of processing FOI requests. SWLRV believes the Department of Justice and Community Safety should be singled out as an agency in need of additional training provided by OVIC and external trainers.

Recommendation 3

Training of Department of Justice and Community Safety staff to focus on fostering a positive FOI culture within the public service Department leadership, over and above the political leadership of the Department.

Achieving a positive FOI culture within public service agency leadership is key to achieving better FOI outcomes, including improving the timeliness of processing requests. We suspect a failure to process FOI requests in a timely manner is in part the result of a poor FOI culture within agencies, specifically within the Department of Justice and Community Safety.

Recommendation 4

OVIC to publish annual tables naming and ranking 100 of Victoria's largest agencies according to their performance on the timeliness of processing FOI requests.

Recommendation 5

Introduce financial incentives to encourage agencies to process FOI requests in a timely manner.

This could involve agencies voluntarily opting into a scheme where they offer to refund an FOI application fee in the event a request is not processed in a timely manner.

Agencies could also be penalised financially if they fail to meet annual benchmark indicators on timeliness of processing requests.

Sex Work Law Reform Victoria – an advocacy group for sex workers

Sex Work Law Reform Victoria (SWLRV) is a volunteer non-partisan lobby group comprised of former and current sex workers. We formed in 2018 for the express purpose of lobbying and advocating for the full decriminalisation of sex work in Victoria. Since founding, SWLRV has relied upon the *Freedom of Information Act 1982 (Vic)* to access documents relating to the means by which local and state governments attempt to regulate the sex industry. Documents obtained via FOI have assisted us to assess the degree to which existing sex industry laws succeed in achieving their stated goals.

Over the last five years, there has been a dearth of research into Victoria's sex industry and the manner in which it is regulated. In November 2019, the Victorian Government announced a *Review to make recommendations for the decriminalisation of sex work*.¹

This means that now, more than ever, there is a pressing need for sex workers' rights advocates to be granted access to documents relating to sex industry regulation in Victoria, in a timely manner according to *Freedom of Information Act 1982*.

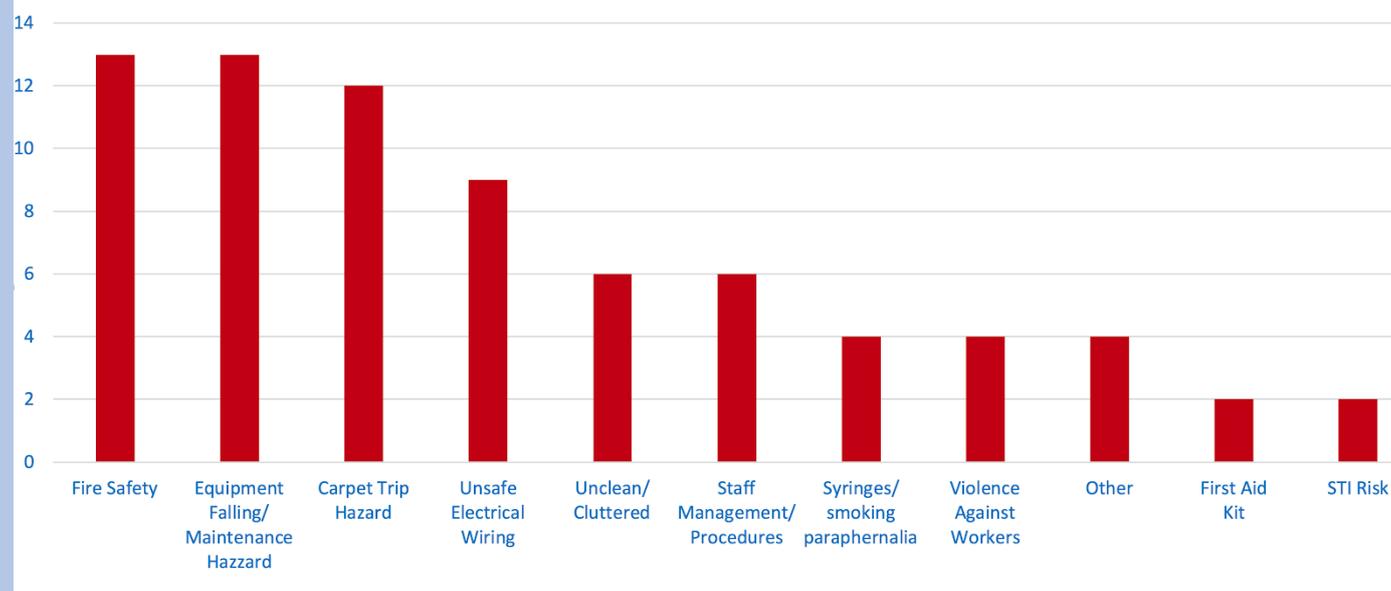
¹ Victorian Government, *Review to make recommendations for the decriminalisation of sex work* (28 September 2020) Victorian Government

<<https://www.vic.gov.au/sexworkreview>>

Case Study: FOI Reveals Workplace Hazards in Brothels

A number of FOI requests submitted to WorkSafe Victoria shed light on the types of hazards as identified by WorkSafe Victoria in Victoria's 90 licensed brothels. This case study provides an example of how FOI requests processed in a timely manner can assist advocates and governments to identify potential safety issues in the sex industry, with a view to improving safety outcomes. Sex Work Law Reform Victoria has not experienced delays with WorkSafe Victoria processing FOI requests.

Number and Type of Hazards in Brothels Over an Eleven Year Period



Notes on Data

1. Source: WorkSafe Victoria
2. Data extracted from Entry Reports as a result of Responsive and Compliance visits.
3. Eleven-year period: 1 July 2007 – 30 June 2018
4. Between 2007 – 2018 the number of licensed brothels in Victoria fluctuated between 90 and 100.
5. Reported hazards only included if they resulted in an inspection.
6. Hazards listed are alleged. Includes reports unsubstantiated upon inspection.

The Department of Justice and Community Safety

The regulation of Victoria's sex industry is complex and involves a number of agencies.² Consumer Affairs Victoria and the Business Licensing Authority play leading regulatory roles, being

² Drugs and Crime Prevention Committee, *Inquiry into People Trafficking for Sex Work* (2010) Parliament of Victoria, p 136

< https://www.parliament.vic.gov.au/images/stories/Trafficking_Final_full_report_with_cover.pdf >

responsible for registering over 1,000 individual sex workers^{3 4} and licensing 731 sex industry business managers and owners.⁵

FOI requests to access documents held by Consumer Affairs Victoria or the Business Licensing Authority must be made to the Department of Justice and Community Safety.

While SWLRV volunteers have made FOI requests to a number of agencies, the majority of delays experienced have arisen from the Department of Justice and Community Safety.

Two Ways Agencies Delay Providing Access to Information

1. Failure to process requests within statutory time period (section 21 delays)

Section 15(5)b of the *Freedom of Information Act 1982* (Vic) requires agencies to process requests within 30- or 45- days, depending on whether third party consultation is required. We have experienced delays where the Department of Justice and Community Safety failed to process requests within the statutorily required timeframe.

2. Delay via refusal

A second manner in which agencies can delay processing requests is to refuse access to documents within the initial 30- or 45- day time period, only to have the decision overturned when the applicant seeks Review at OVIC or at the Victorian Civil and Administrative Tribunal (VCAT). In this scenario, documents are eventually provided to the applicant, but the Review/VCAT process(es) can add many months to the timeline.

SWLRV volunteers have been successful in having numerous Department of Justice and Community Safety FOI refusals overturned on Review or application to VCAT. In one extreme case, an FOI request heard at VCAT resulted in the documents eventually being released – one year and ten days after the Department received our original request.^{6 7}

In our experience, the most common manner in which the Department of Justice and Community Safety delays processing requests is delay via refusal.

Impact of Delays

Like many sex worker advocacy groups, our group relies on volunteers with limited resources. Delays in processing our requests, either by failing to comply with section 21 of the Act or delay via refusal, act as a drain on our limited resources and divert our volunteer time away from other pressing issues.

We appreciate OVIC exercising its powers under Part VIB of the *Freedom of Information Act 1982* (Vic) to launch an investigation into freedom of information matters of concern to FOI applicants. We hope this investigation highlights to OVIC the problems within the Department of Justice and Community Safety in relation to FOI timeliness, and in particular our experience with delays by refusal which were subsequently overturned on review by OVIC or VCAT.

³ 1,167 registered individual sex workers as at 30 June 2019 according to the Department of Justice and Community Safety

⁴ Department of Justice and Regulation, 1 August 2019, Freedom of Information request, FOI Reference 70803

⁵ Consumer Affairs Victoria, *Annual Report 2018-19* (report, 2019) at Table 3

⁶ *Roberts v Department of Justice and Regulation (Review and Regulation)* [2018] VCAT 1560 (9 October 2018)

⁷ The Department received the initial FOI request on 30 October 2017, and released the documents on 9 November 2018