

Secretary to the Committee
Parliament House
GPO Box 572
Adelaide 5001
By email: rswo@parliament.sa.gov.au

7 May 2021

Dear Secretary,

Statutes Amendment (Repeal of Sex Work Offences) Bill 2020

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

SWLRV advocates for, amongst other things:

- the full decriminalisation of consensual adult sex work in Victoria

We appreciate this opportunity to contribute to the *Statutes Amendment (Repeal of Sex Work Offences) Bill 2020* inquiry and attach our submission accordingly.

Sincerely,

Lisa Dallimore

President, Sex Work Law Reform Victoria Inc.

1. Who We Are

Sex Work Law Reform Victoria Inc. (SWLRV) is a volunteer run non-partisan advocacy group led by former and current sex workers. Structured as a not-for-profit organisation, we formed in 2018 with the express purpose of advocating for the legal rights of sex workers in Victoria. We recognise that sex workers in other Australian jurisdictions face similar law reform struggles to our own and we are therefore happy to assist other sex workers' rights campaigns.

Fitzroy Legal Service has checked for legal accuracy statements contained in this document regarding the law. This is general information only and is not to be taken as legal advice.

2. Executive Summary

We recommend the passage of the *Statutes Amendment (Repeal of Sex Work Offences) Bill 2020* without amendments. The Bill removes police powers to charge sex industry workers or third parties with crimes relating to consensual adult sexual activity. By retaining crimes of sexual servitude, deceptive recruiting and the hiring of children into commercial sex work, the Bill enables police resources to be focussed on protecting children and combatting sexual servitude and similar crimes.

In South Australia, only 3.9% of all sex work related offences between 2016 and 2020 were for crimes relating to children in the sex industry, sexual servitude or deceptive recruiting. All other offences (96.1%) related to activities associated with *consensual* adult sex work. (See Table 1 on page 6)

3. Summary of Recommendations

Recommendation 1

The South Australian Parliament pass the Statutes Amendment (Repeal of Sex Work Offences) Bill 2020 without amendments.

Recommendation 2

South Australia to eschew any amendments to the Bill which would result in the adoption of a licensing model of sex industry regulation.

Recommendation 3

South Australia to eschew any amendments to the Bill which would result in the adoption of a brothel certificate model of sex industry regulation.

4. Glossary

Crime Statistics Agency

A Victorian agency which publishes Victorian offending data extracted from the Victoria Police Law Enforcement Assistance Program (LEAP).

Fitzroy Legal Service

A community legal service in Melbourne.

Justice Policy and Analytics

A business unit within the South Australian Attorney General's Department which publishes data regarding crime in South Australia gathered from different government agencies.

LEAP

The Law Enforcement Assistance Program. A database where Victoria Police enters recorded offences. Victoria's Crime Statistics Agency (CSA) extracts data from LEAP to conduct statistical analysis.

Licensing Model

A model of sex industry regulation using criminal law (as opposed to civil law) to require licensing/registration of sex industry businesses as well as individual sex workers. Licensing model laws are largely enforced by police.

Sex work laws

State/territory criminal laws which relate specifically to the sex industry.

STI

Sexually transmissible infection.

Suitability Certificates

A registration certificate required by individuals/companies to operate a sex industry business.

4. Sex Work Laws in South Australia and Victoria

Neither South Australia nor Victoria has decriminalised sex work. In both states, existing criminal laws pertaining to sex work give police the powers to charge sex industry workers and third parties with crimes relating to consensual adult sex work^{1 2}. While the entire industry is driven underground in South Australia, a majority of the industry is driven underground in Victoria.

While South Australia criminalises all forms of sex work by attaching criminal penalties to the activities surrounding sex work, such as brothel keeping or soliciting¹, Victoria legalises some forms of sex work using a licensing framework whereby all sex industry businesses owners and managers must obtain a license from the Victorian Government². Individual self-employed sex workers must register with the Victorian Government³. Highly restrictive local government planning schemes⁴ and prohibitively high annual licensing fees (sometimes in excess of \$10,000⁵) drive most Victorian brothels underground. Street based sex work remains a crime for both sex worker and client in Victoria⁶.

In practice, Victoria's now outdated laws criminalise the majority of the state's sex workers, driving most of the industry underground. Estimates vary, but as much as 80% of Victoria's sex industry may operate outside the licensing framework (that is, operate illegally). A minority of the industry operates legally, able to meet the strict licensing/registration requirements.

5. State and Territory Parliaments Increasingly Comfortable with Decriminalising Sex Work

Australia is seeing a trend towards the decriminalisation of consensual adult sex work: in 1995 New South Wales mostly decriminalised sex work⁷; in 2019, the Northern Territory followed suit⁸.

In 2018 the Victorian Labor Party sought to decriminalise sex work in its *Platform 2018*⁹. The following year, the Victorian Labor Government announced a *Review to make recommendations for*

¹ *Criminal Law Consolidation Act 1935* (SA) s 270 ('*Criminal Law Consolidation Act*'); *Summary Offences Act 1953* (SA) ss 21, 25–6, 28, 29, 31–2.

² See *Sex Work Act 1994* (Vic) ('*Sex Work Act*'); *Sex Work Regulations 2016* (Vic); *Sex Work (Fees) Regulations 2014* (Vic).

³ Consumer Affairs Victoria, *How to register as a small owner-operator* (Web page, 21 March 2021)

<<https://www.consumer.vic.gov.au/licensing-and-registration/sex-work-service-providers/small-owner-operators/how-to-register-as-a-small-owner-operator>>.

⁴ See Victoria State Government, *Victoria Planning Provisions* (Planning Scheme, 30 April 2021)

<https://planning-schemes.api.delwp.vic.gov.au/_data/assets/pdf_file/0007/481723/VPPs_All_Clauses.pdf?ga=2.254615886.790392141.1618868434-1886335051.1618868434>.

⁵ Eros Association, *Did You Know*, (Web page)

<https://www.eros.org.au/wp-content/uploads/2019/08/EA-071901-Brothel-Fact-sheet_1-2.pdf>.

⁶ *Sex Work Act 1994* (Vic) (n 2) ss 12–13.

⁷ Basil Donovan et al, 'The Sex Industry in New South Wales: A Report to the NSW Ministry of Health' (Research Report, Kirby Institute, University of New South Wales, 2012) 10 [Table 1]

<<https://kirby.unsw.edu.au/report/nsw-sex-industry-report-2012>>.

⁸ See *Sex Industry Act 2019* (NT).

⁹ Victorian Branch Australian Labor Party, *Platform 2018* (Political publication, 2018) [5.2.2]

<<https://www.viclabor.com.au/wp-content/uploads/2018/11/Platform-2018-Final-Web.pdf>>.

*the decriminalisation of sex work*¹⁰. This review sought recommendations on *how* to decriminalise sex work, not *whether* or not the state *should* decriminalise sex work¹¹. In short, Victoria has moved beyond debates about the merits of various methods of sex work prohibition; the state is now considering the best way to implement sex work decriminalisation laws.

The Victorian Government is expected to table a sex work decriminalisation bill in late 2021.

6. Concerns Around Human Trafficking, Sex Slavery, Deceptive Recruiting, Sexual Servitude and the Recruitment of Children

Across Australia, concerns remain about serious crimes within the sex industry, such as human trafficking, sex slavery, deceptive recruiting, sexual servitude and the recruitment of children into the sex industry. Such crimes have nothing to do with consensual adult sex work. The crimes referred to above instead relate to minors, or non-consensual sex work where an adult does not make an informed decision to willingly work in the sex industry.

The *Statutes Amendment (Repeal of Sex Work Offences) Bill 2020* retains all crimes concerning deceptive recruiting and sexual servitude already in force in South Australian legislation¹². The Bill also retains harsh criminal penalties to anyone who employs, engages, causes or permits a child to engage in commercial sexual services¹³. The Bill retains the maximum penalty of imprisonment for life for the crime of the use of a child under the age of 14 in commercial sexual services¹⁴.

The Bill has no impact on existing strict federal human trafficking and sex slavery related offences contained in the *Criminal Code Act 1995* (Cth)¹⁵. Should the *Statutes Amendment (Repeal of Sex Work Offences) Bill 2020* pass, all human trafficking and sex slavery federal offences would remain in place and continue to protect sex workers and others from human traffickers.

¹⁰ Premier of Victoria, 'Review Into Decriminalisation Of Sex Work' (Media Release, 27 November 2019) <<https://www.premier.vic.gov.au/review-into-decriminalisation-of-sex-work-0>>.

¹¹ Victorian Government, 'Review to make recommendations for the decriminalisation of sex work' (Web page, 28 September 2020) <<https://www.vic.gov.au/review-make-recommendations-decriminalisation-sex-work>>.

¹² The *Statutes Amendment (Repeal of Sex Work Offences) Bill 2020* does not seek to remove s 66 (Sexual servitude and related offences) or s 67 (Deceptive recruiting for commercial sexual services) of the *Criminal Law Consolidation Act 1935* (SA).

¹³ The *Statutes Amendment (Repeal of Sex Work Offences) Bill 2020* does not seek to remove s 68 (Use of children in commercial sexual services) of the *Criminal Law Consolidation Act 1935* (SA).

¹⁴ *Criminal Law Consolidation Act* (n 1) s 68(1)(a).

¹⁵ *Criminal Code Act 1995* (Cth) divs 270–1.

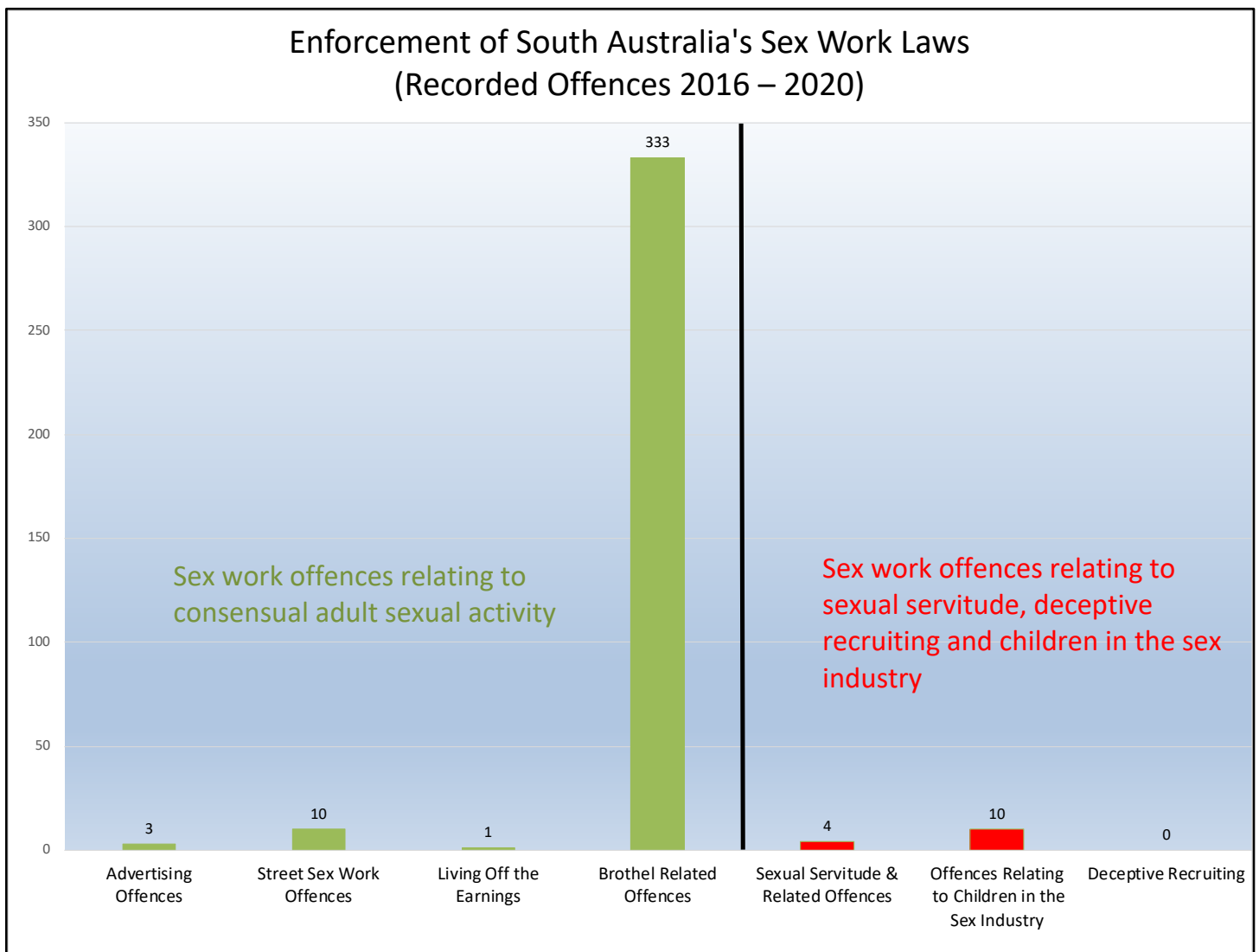
7. Police Powers Diverted from Protecting Children

Both Victoria and South Australia criminalise most or all aspects of their respective sex industries. Police statistics from both states show that state police resources are predominantly used to charge people with offences relating to consensual adult sex work.

In South Australia, only 3.9% of all sex work related offences between 2016 and 2020 were for crimes relating to children in the sex industry, sexual servitude or deceptive recruiting. All other offences (96.1%) related to activities associated with *consensual* adult sex work. (See Table 1 below)

Criminalising all aspects of sex work in South Australia diverts police resources from protecting children and combatting sexual servitude and deceptive recruiting.

Chart 1 – South Australia



Source for Chart 1 – South Australia

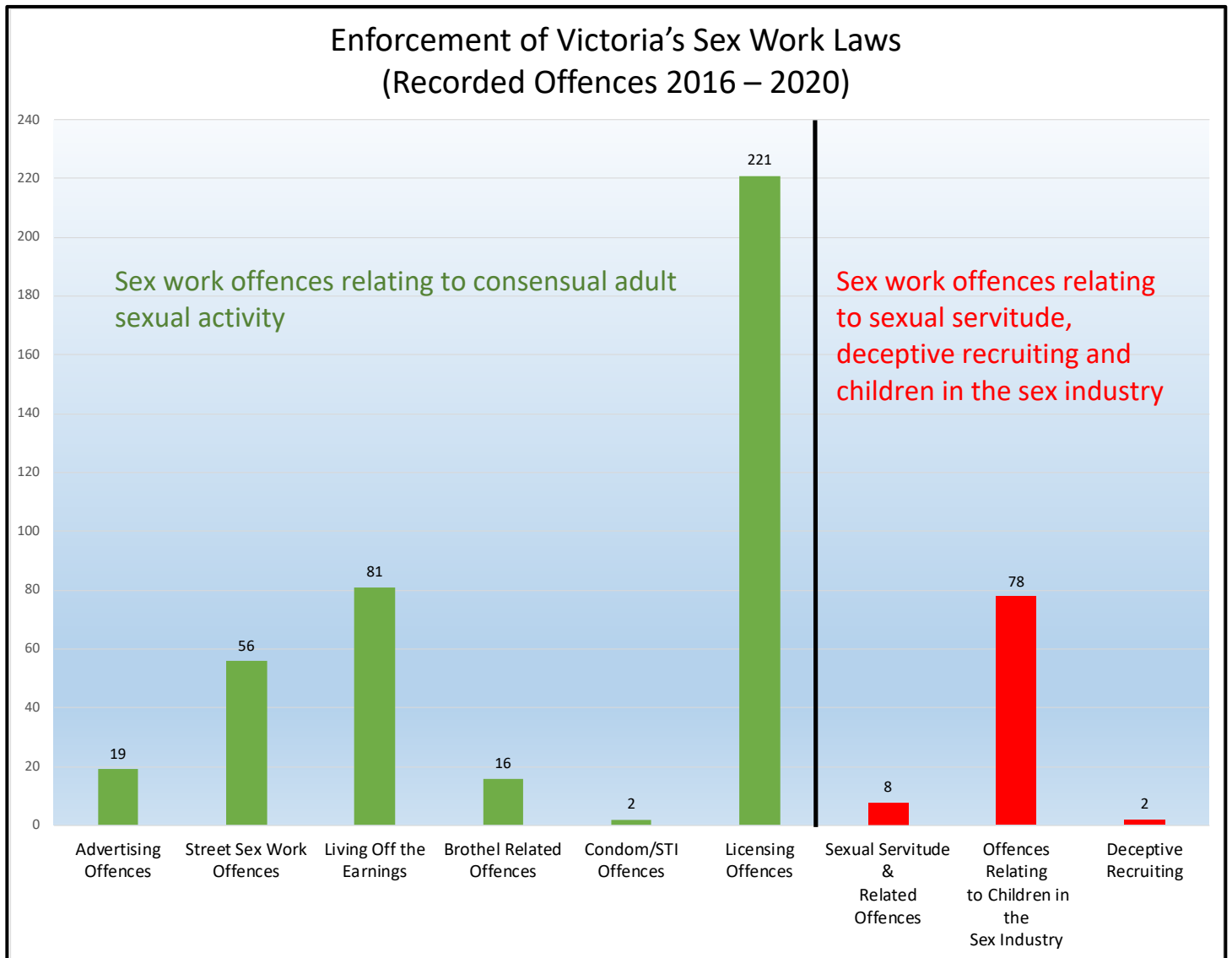
Justice Policy and Analytics, South Australian Attorney General's Department
(data extracted on 21/04/2021)

Notes on Chart 1 – South Australia

1. Sex work offences are state/territory offences relating specifically to the sex industry.
2. The graph captures the number of recorded offences, not convictions.
3. Number of offences is not the same as the number of offenders, as one offender may commit more than one offence in the time period captured by the data.
4. All South Australian sex work offences are found in the *Criminal Law Consolidation Act 1935* (SA) and the *Summary Offences Act 1953* (SA).
5. Recorded offences do not reveal court/sentencing outcomes.
6. No data available prior to 19/04/2016.
7. Total offences are for the five-year time period 19/04/2016 – 18/04/2021
8. Licensing offences are omitted as South Australia does not license the sex industry and so has no offences relating to licensing/registration.
9. Offences relating to STI's and condom use are omitted as South Australia has no sex work offences relating to either of these.
10. Comparisons between the South Australian and Victorian graphs must consider differences between the two states such as population size and the differences between specific sex work offences.
11. Court data was extracted from AGD's Justice Sector Analytics Database (derived from the Courts Administration Authority (CAA) Data Warehouse) on 21 April 2021.
12. Double counting of case defendants was avoided by excluding Higher Court lodgements.
13. Offences have been grouped into categories. See Appendix 1 for more information.

Victoria’s licensing model of sex work regulation criminalises most aspects of sex work in Victoria, diverting police resources from protecting children and combatting sexual servitude and deceptive recruiting.

Chart 2 – Victoria



Source for Chart 2 – Victoria

The Victorian Crime Statistics Agency
(data extracted from LEAP on 18 January 2021)

Notes on Chart 2 – Victoria

1. Sex work offences are state/territory offences relating specifically to the sex industry.
2. The graph captures the number of recorded offences, not convictions.
3. Number of offences is not the same as the number of offenders, as one offender may commit more than one offence in the time period captured by the data.
4. All Victorian sex work offences are found in the *Sex Work Act 1994 (Vic)*, the *Public Health and Wellbeing Act 2008 (Vic)*, the *Sex Work Regulations 2006 (Vic)*, the *Sex Work Regulations 2016 (Vic)* and the *Crimes Act 1958 (Vic)*.
5. All Victorian sex work legislation is enforced by Victoria Police except the *Public Health and Wellbeing Act 2008 (Vic)* which is enforced by the Victorian Department of Health
6. Recorded offences do not reveal court/sentencing outcomes.
7. Comparisons between the South Australian and Victorian graphs must consider differences between the two states such as population size and the differences between specific sex work offences.
8. STI means sexually transmissible infection
9. Offending data extracted from the Victoria Police Law Enforcement Assistance Program (LEAP)
10. Total offences are for the five-year time period 01/01/2016 – 31/12/2020
11. Offences have been grouped into categories. See Appendix 2 for more information.
12. The Victorian Department of Health reported no recorded sex work offences in the *Public Health and Wellbeing Act 2008 (Vic)* between 2016 – 2020. Offences under this Act are therefore not included in the above chart.

8. Brothel Certificate and Sex Industry Licensing Models

After considering sex industry legislative reforms, some jurisdictions have adopted a brothel certificate model of regulation (New Zealand¹⁶ and Northern Territory¹⁷) or a sex industry licensing model (Queensland¹⁸, ACT¹⁹ and Victoria²⁰).

From a health and safety perspective, greater regulation of brothels and individual sex workers might at first seem to be a good thing. In practice, not all forms of regulation result in positive health and safety outcomes, with many academics and the regulators themselves opposing the brothel certificate and licensing models of sex industry regulation.

In 2012, The Kirby Institute at the University of New South Wales found that,

‘Licensing of sex work (‘legalisation’) should not be regarded as a viable legislative response..... Thus, licensing is a threat to public health.’²¹

In 2010, a Victorian sex trafficking inquiry reported the opinion of a sex industry licensing official (Claire Noone, Executive Director, Consumer Affairs Victoria),

‘Nor did she [Ms Noone] believe there was any noticeable benefit in individual sex workers being registered or identified. Indeed such a move could be said to be prejudicial to their wellbeing and privacy, particularly given the stigma attached to the sex industry.’²²

The Northern Territory’s sex worker organisation, SWOP NT, opposed brothel certificate systems (as adopted by New Zealand in 2003) in their submission to a sex industry inquiry in 2019,

‘SWOP NT and SWRG do not recommend a return to certification or registration of sex workers or the licensing of sex industry business.’²³

Since 1994 the licensing system in Victoria has given Victoria Police powers to charge sex industry workers and third parties with crimes relating to consensual adult sexual activity. Chart 2 – Victoria presented in this submission clearly demonstrates Victoria Police powers have predominantly been

¹⁶ Select Committee on the Regulation of Brothels, Parliament of New South Wales, *Inquiry into the Regulation of Brothels* (Report No 1/56, November 2015) [2.86] <<https://www.parliament.nsw.gov.au/ladocs/inquiries/1703/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brot.pdf>>.

¹⁷ *Sex Industry Act 2019* (NT) s 18(1)–(2).

¹⁸ Select Committee on the Regulation of Brothels (n 16) 21 [2.79]

<<https://www.parliament.nsw.gov.au/ladocs/inquiries/1703/Final%20Report%20-%20Inquiry%20into%20the%20Regulation%20of%20Brot.pdf>>.

¹⁹ *Ibid* 21 [2.80].

²⁰ *Ibid* 18–19 [2.68]–[2.71].

²¹ Basil Donovan et al. (n 7) 7 [Recommendation 2].

²² Drugs and Crime Prevention Committee, Parliament of Victoria, *Inquiry into People Trafficking for Sex Work* (Final Report No 312, June 2010) 131

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

²³ Sex Worker Outreach Program and Sex Worker Reference Group, ‘Reforming Regulation of the Sex Industry in the Northern Territory’ (Discussion Paper 29 March 2019) 9 [6.1.2]

<https://irp-cdn.multiscreensite.com/7a46c311/files/uploaded/final_swop_nt_swrg_submission_law_reform_nt.pdf>.

used to charge sex industry workers and third parties with crimes relating to consensual adult sex work.

The experience from other Australian jurisdictions demonstrate that brothel certificate or licensing models of sex industry regulation do not provide any benefits to the health and safety of sex workers or the community at large. Such approaches have in practice been poorly adopted and rarely enforced. At best, such approaches are unnecessary; at worst they drive most of the sex industry underground.

Recommendation 2

South Australia to eschew any amendments to the Bill which would result in the adoption of a licensing model of sex industry regulation.

Recommendation 3

South Australia to eschew any amendments to the Bill which would result in the adoption of a brothel certificate model of sex industry regulation.

9. Conclusion

We appreciate the opportunity to submit to this inquiry. We look forward to reading the final report and hope that South Australia will find a path to sex work decriminalisation.

Appendix 1

Chart 1 groups all South Australian sex work offences into categories according to the table below. The table identifies the statutory sections from each Act where offences have been committed, which have been classified into each category labelled in Chart 1. Statutory sections with zero recorded offences across the chart timeframe (19/04/2016 – 19/4/2021) have been included in the table below.

Acronyms Used in Table 1

*SOA means *Summary Offences Act 1953 (SA)*

**CLCA means *Criminal Law Consolidation Act 1935 (SA)*

Table 1 – South Australia

Horizontal Axis Category Label on Chart 1	Legislation	Statutory Section	Law Description	Maximum Penalty
Street Sex Work Offences	SOA*	25(a)	Solicit for prostitution in a public place	\$750 fine
		25(b)	Loiter for prostitution in a public place	\$750 fine
Living Off the Earnings	SOA*	26(1)	Live on the earnings of prostitution	6-month imprisonment or \$2500 fine
Brothel Related Offences	CLCA**	270(1)(b)	Keep common bawdy or disorderly house	2-year imprisonment
	SOA*	21(1)(a)	Permit premises to be frequented by reputed thieves, prostitutes, persons without lawful means of support or persons of notoriously bad character	\$750 fine
	SOA*	21(1)(b)	Be on premises frequented by reputed thieves, prostitutes, persons without lawful means of support or persons of notoriously bad character	\$750 fine
	SOA*	28(1)(a)	Keep or manage, or assist in the keeping or managing of a brothel	6-month imprisonment or \$2500 fine
	SOA*	28(1)(b)	Receive money paid in brothel in respect of prostitution	6-month imprisonment or \$2500 fine
	SOA*	29(a)	Let or sublet premises knowing they are to be used for prostitution	6-month imprisonment or \$2500 fine
	SOA*	29(b)	Permit premises to be used as a brothel	6-month imprisonment or \$2500 fine
	Common Law Offence	-	-	Keep a common bawdy-house
Offences relating to children in the sex industry	CLCA**	68(1)	Employ a child to provide commercial sexual services	Life imprisonment
		68(2)	Ask a child to provide commercial sexual services	9-year imprisonment
		68(3)(a)	Have arrangement with child for proceeds of sexual services	5-year imprisonment
		68(3)(b)	Exploit child for proceeds of commercial sexual services	5-year imprisonment
Sexual servitude and related offences	CLCA**	66(1)	Inflict sexual servitude on a person	Life imprisonment
		66(2)	Use undue influence to gain commercial sexual services	Life imprisonment
Advertising	SOA*	25A(1)	Engage in procurement for prostitution	3-month imprisonment or \$1250 fine
Deceptive recruiting	CLCA**	67	Fail to disclose employment offer includes sexual services	12-year imprisonment

Appendix 2

Chart 2 groups all Victorian sex work offences into categories according to the table below. The table identifies the statutory sections from each Act which has been classified into each category identified on Chart 2. Most statutory sections with zero recorded offences across the chart timeframe (2016 – 2020) have been omitted from the table below, including ss 158-165 of the *Public Health and Wellbeing Act 2008* (Vic).

Acronyms used in Table 2

SWA means *Sex Work Act 1994* (Vic)

SWR6 means *Sex Work Regulations 2006* (Vic)

SWR16 means *Sex Work Regulations 2016* (Vic)

CA means *Crimes Act 1958* (Vic)

SOA means *Summary Offences Act 1966* (Vic)

Table 2 – Victoria

Horizontal Axis Category Label on Chart 1	SWA	SWR6	SWR16	CA	SOA
Street Sex Work Offences	12(1) – 3 offences; 12(1)(d) – 0 offences; 12(2)(a) – 5 offences; 12(2)(b) – 27 offences; 13(1) – 1 offence; 13(2) – 16 offences; 21G(1) – 1 offence; 21G(2) – 2 offences.				18(a) – 3 offences.
Licensing Offences	15 – 12 offences; 22(1)(a) – 135 offences; 22(1)(b) – 2 offences; 22(1A)(a) – 52 offences; 22(1A)(b) – 1 offence; 22(3) – 2 offences; 22(4) – 0 offences; 42(4) – 1 offence; 42(5) – 1 offence; 45(1) – 1 offence; 49(3) – 11 offences; 57(1) – 2 offences; 61 – 0 offences; 81(3) – 1 offence.				

Horizontal Axis Category Label on Chart 1	SWA	SWR6	SWR16	CA	SOA
Living Off the Earnings	10(1) – 81 offences.				
Brothel Related Offences	11A(1) – 10 offences; 21A(1) – 4 offences; 58(b) – 0 offences; 59(3)(a) – 0 offences; 59(3)(b) – 0 offences; 59(3)(c) – 1 offence.	7(3) – 0 offences.	7(2) – 1 offence.		
Advertising Offences	17(1)(a) – 1 offence; 17(1)(b) – 0 offences; 17(3)(a) – 0 offences; 17(3)(b) – 0 offences; 17(4)(a) – 0 offences; 17(4)(b) – 0 offences.				
Condom/STI Offences	18A(1) – 1 offence; 20(1) – 0 offences.				
Offences relating to children in the sex industry	5(1) – 20 offences; 6(1) – 9 offences; 7(1) – 39 offences; 11(1) – 10 offences.				
Sexual servitude and related offences	8(1)(a) – 1 offence; 8(1)(b) – 4 offences; 9(1) – 1 offence; 9(1)(a) – 0 offences; 9(1)(b) – 1 offences; 9(1)(c) – 0 offences; 16(a) – 0 offences; 16(b) – 1 offence.				
Deceptive Recruiting				60AE(1) – 2 offences ²⁴ .	

²⁴ Repealed in 2017 by s 16 of the *Criminal Amendment (Sexual Offences) Act 2016* (Vic), which came into effect in 2017.