

Australian Law Reform Commission Justice Responses to Sexual Violence: Issues Paper (2024)

Project Respect Consultation Submission

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Introductory Comments

Project Respect is a Victorian based specialist support and referral service for women and gender diverse people with experience in the sex industry and for women and gender diverse people with experiences of sexual exploitation, including trafficking. We have worked with our community since 1998, providing trauma informed, goal led and person-centred case coordination, community engagement activities including brothel outreach and community connection events, research, and capacity building training to support sector and community organisations' ability to effectively provide support to women in the sex industry without stigma or discrimination.

While we are primarily based in Victoria, we provide support to women and gender diverse people throughout Australia, and work in collaboration with other organisations across sectors such as family violence, housing, and legal services to provide multifaceted care to service users. We hold a seat on the National Roundtable on Human Trafficking and Slavery.

Project Respect's primary purposes are to:

- Provide support to women and gender diverse people with experience in the sex industry to achieve self-directed goals, including equitable access to services;
- Provide support to women and gender diverse people who have experienced trafficking for sexual exploitation, whether current, historic, international or domestic;
- Advocate for structural change to end sexual exploitation.

We provide a platform to elevate and amplify the voices of, while also being informed and guided by, those with past and present lived experience - including through our Lived Experience Advisory Group (LEAG).

We appreciate the opportunity to provide a written submission concerning the Australian Law Reform Commission's Justice Responses to Sexual Violence: Issues Paper (2024)

We note that as a small and currently severely underfunded service our ability to provide a thorough response to the consultation is constrained by resources and staffing. We do however offer to provide further clarification or to have follow up conversations in relation to our comments below.

Due to these constraints we are unable to respond to all questions in the consultation paper.

Project Respect's Response to the Justice Responses to Sexual Violence: Issues Paper (2024)

Question 3 How can accessing the justice system and reporting be made easier for victim survivors? What would make the process of seeking information and help, and reporting, better?

You might consider the kind of information given to victim survivors, the confidentiality of the process, and the requirements of particular groups in the community.

Response:

Women in the sex industry face additional barriers when reporting crimes to authorities and accessing support services. These barriers often deter women in the sex industry from accessing services and seeking support. Stigma, discrimination and the normalisation of violence make it difficult for women in the sex industry to report forms of sexual violence. Expectations of judgement when reporting and that they won't be taken seriously also act as deterrents.

A reporting process specific to sex workers such as a phone line, where the discussion can be commenced anonymously, and staffed by people with knowledge of the needs of sex workers could be a great initiative to breaking down these barriers.

Willingness by the system to allow support people from specialist services to accompany complainants, support them and help understand the information given would be helpful. All too often, advocates and support people are discouraged through fear of evidence contamination or interfering with the justice process. A system that is built with care and safety of victims first, and 'justice outcomes' second, would go a long way in ensuring that the supports for victim survivors are consistent, trust is built, and the risk of longer term harms (including system harms) are mitigated. There is a lot of work to be done in breaking down these barriers with sex workers.

Question 4 Do you have other ideas for what needs to be done to ensure that victim survivors have a safe opportunity to tell someone about their experience and get appropriate support and information?

Response:

To ensure that women in the sex industry are getting access to the supports and services they need to assist them with reporting sexual harm, it is essential that the women understand their rights within the industry, which includes information regarding what constitutes non-consensual services. This includes workers with language barriers, or who are less experienced in the industry. Methods of communicating these rights need to be embedded consistently within the industry.

There needs to be clear communication about what constitutes an offence and/or a crime, as well as information about how and where sex workers can report this. One way to assist women in reporting sexual harm is making available a 'how to report' document within brothels and workplaces, and online, which outlines how to report a sexual assault and what the process entails. This document could also include statements that encourage workers to report, such as explaining that making a

report will not affect their employment. Specific regulations may be needed to ensure that this (making a report not impacting employment) is upheld and supported by legislation.

As suggested above, there could be consideration of a specific phone number, which is readily displayed in brothels for women and available online, to be able to contact anonymously if they want to report any breaches to consent within their work, violence against them, or exploitation. The sex industry is largely 'night-shift' so a 24/7 peer-led helpline may also be useful.

As many workers may not want to report violence where they can be identified, a platform that could enable anonymous reporting via a digital tool or app could be considered. While such platforms are available 'in industry' such as Ugly Mugs or Red Files, a separate option where it is made clear that the report could be used by police to triangulate information could be considered, that clearly indicates this is the use. Workers can then decide if this is something they would like to do.

A 2015 Australian Institute of Criminology (AIC) report has highlighted how some groups of migrant sex workers experienced difficulties in accessing services, particularly those with low self-rated English proficiency. The barriers to services and information for migrant respondents involved language, a lack of knowledge about what services were available and a fear of using such services; what those fears related to could not be ascertained from the survey responses. This highlights the important need for multilingual support services and translated information, and reporting options to also be available in the main languages of the sex industry, including reporting to bilingual workers.¹

For women in the sex industry who have been sexually harmed to get the appropriate support, it is important that support services are familiar with the complexity of trauma that is experienced by women involved in the industry. Exploitation experienced by women in the sex industry is complex and more likely to be recognised and responded to in the services system rather than within a criminal justice context. Even then, many services often aren't equipped to deal with the complexities of the issues.

Support services need to understand that due to the normalisation of violence that sometimes occurs, it may be a gradual process for women with experience in the sex industry to come to understand their experience as violence. Further, the complexity of the space and compounding trauma can mean that women with experience of the industry may not respond to sexual trauma in the manner in which other women may respond. For these reasons, specialised support services, that understand the complexities of issues is necessary, and there needs to be options available in what services are available to them.

¹ Lauren Renshaw et al, 'Migrant sex workers in Australia' (2015) (Research and Public Policy Series no. 131, Australian Institute of Criminology, 1 November 2015) 20 <<https://www.aic.gov.au/publications/rpp/rpp131>>. ('AIC Research Report 2015')

Question 7 What are your ideas for improving police responses to reports of sexual violence? What can be done?

Response:

1. Enabling a non-discriminatory and comfortable environment for women who have been sexually harmed to engage in the police investigation process, which could include the option to speak specifically to a female police officer.
2. Ensuring the police investigation process can engage with women from multicultural and non-English speaking backgrounds.
3. Implementing a direct phone line that allows women in sex work/sex industry settings to report sexual assault.
4. Ensure that police officers are appropriately trained on how to support sex workers and their experiences of sexual violence.

The stigma and discrimination women with experience of the sex industry face is pervasive, and many women report to Project Respect that this is perpetuated within the services that have been established to support them, including state and federal policing agents. SOCIT and MDC's could be improved by undertaking specific training to increase their understanding of sexual offences within the context of the sex industry setting.

The closure of Victoria Police Sex Industry Coordination Unit (SICU) was a great loss to policing in Victoria. There was an opportunity to repurpose this team, or part of the team, to hold a portfolio of specialist response to crimes against sex workers. Instead, the team was disbanded and there is an expectation that every individual officer across the state is able to understand the needs of sex workers in Victoria. This is a huge step backwards in the work required to bridge the gap in trust of the police by sex workers and the ability to report crimes against them.

We have found in supporting service users making a report to police that the process of making a statement can be extremely long, tiring and traumatic. The way a complainant is spoken to, if not done with care, compassion and respect, can be traumatising and invalidates their experience. Following the making of a report, sometimes a complainant hears nothing for weeks on end and is not proactively contacted to be updated on the progress of their report. Being consistently updated would be helpful even if there has been no progress for a period.

There are issues with reporting of sexual assault within a sex work business and we continue to hear of workers penalised for even ending bookings where sexual assault has occurred, let alone reporting that assault to police. There needs to be a mechanism to proactively monitor whether sex work businesses are covering up sexual assault, and a recognition that where there is a profit motive there will be much greater barriers to reporting of crime.

Question 24 Should cross-examination that reflects myths and misconceptions about sexual violence, such as the belief that a 'rape victim' would be expected to complain at the first reasonable opportunity be restricted on the ground that it is irrelevant or on any other ground?

Response:

There needs to be consideration of jury direction about not considering a complainant's work – which includes sex work. There are considerable myths around sexual assault of a sex worker not being possible due to their work. These need to be specifically excluded in a court proceeding. A similar amendment has been made in the Victorian legislation to support this.

Question 33 Do you have views about the creation of specialist courts, sections, or lists?

Do you support specialised training for judges who conduct sexual offence cases? What issues should that training address?

Do you support some form of special accreditation for lawyers who appear in sexual offence cases? Would this reduce the number of lawyers available to appear in such cases and contribute to delays in hearing such cases?

Response:

Given the further specialist needs of sex workers, including migrant sex workers, there may be some opportunity to enhance this understanding in the court setting where there are specialist courts created. This would allow for education of judges and lawyers to remove bias against sex workers to be more effective, as it would be spread over a smaller contingent of legal personnel who would also be able to engage in more effective communities of practice. Where this starts to show positive results in the removal of bias, this might in turn accelerate a growth in trust in the system by marginalised groups such as sex workers, increasing their likelihood to report – and eventually reduce offending if it is clear that offending will have actual consequences.

Question 35

What are your ideas for reducing delays? Can there be a national approach to reducing some aspects of the delay?

Response:

Lengthy delays in court processes increase the trauma of complainants. Anything that can be done to reduce the trauma load on complainants should be considered. A method to record evidence via video (e.g. a statement or deposition) as early as possible and keep this on file for the later trial may assist. While there is likely to be further cross examination in court, having the statement 'on the record' via video and knowing that it is there for later, may at least help a complainant 'park the story' there and get on with their life in the intervening period between making the statement and appearing at trial.