

Project Respect's submission: "The Justice Project" to the Law Council of Australia

Abstract

Project Respect's submission focuses on justice barriers facing women in the sex industry and women trafficked.

Executive Summary

This submission focuses on our areas of expertise: women in the sex industry and women who have been trafficked for sexual exploitation. Women in the sex industry have not been recognised as a disadvantaged group listed in the terms of reference by The Justice Project. Women in the sex industry are a subset of the population that face specific issues including a disadvantage in access to formal criminal justice pathways. Women in the sex industry are a marginalised group that we believe should be considered in this inquiry. Women in the sex industry fall under several of the 13 groups listed in The Justice Project Consultation Paper, these include:

- (d) Economically disadvantaged and impoverished Australians;
- (e) Homeless persons;
- (h) Those who are trafficked or exploited;
- (l) Those who experience family violence;

Women in the sex industry face additional disadvantage due to entrenched stigma and discrimination around their involvement in the sex industry. Women in the sex industry and women who have been trafficked are some of the most vulnerable women in our community, who are unlikely to appear in official Government statistics. This is why we believe that women in the sex industry including women trafficked should be considered in this consultation.

Key recommendations:

- Australia targets the demand of purchasing sexual services through implementing a Nordic Model decriminalisation approach to the sex industry.
- Delink the support for survivors/victims of trafficking from criminal justice proceedings as support should not be conditional on, or otherwise related to, the success of criminal proceedings.
- Implement longer reflection periods and stronger visa pathways to survivor/victims that are not dependent on criminal justice proceedings.
- Holistic case-coordination/care from the broad spectrum of services is undertaken for all WISI and women trafficked as they navigate the justice system.
- Recognise WISI as a vulnerable group and as a specific cohort, who encounter compounding barriers in accessing justice.
- The legal profession should undergo training specifically on the sex industry and human trafficking as part of their continued professional development.
- The state government conduct an audit of Victorian sex work laws, regulations, policies and programs to identify opportunities for reducing harm and exploitation while recognising the gendered nature of the sex industry and the link between gendered inequality and violence.

- The state government amend the Sex Work Act to make it an offence to willfully, knowingly or recklessly have sex with a trafficked person, or with other persons in the sex industry without their consent.
- Implement comprehensive and appropriate screening mechanisms to Improve identification rates of women experiencing harm in the sex industry, including being exploited, survivors of trafficking and labour exploitation.
- Investigate what measures, statistics and data relating to WISI and women trafficked can be collected while protecting the privacy and safety of women in the sex industry.
- Specialist services such as Project Respect are specifically consulted on how to better support women in the sex industry and women trafficked to access justice.
- Advocate nationally and internationally for higher penalties for breaches of the Sex Work Act 1994 (Vic).
- State, federal and local governments recognise WISI as vulnerable group and as a specific cohort, and recommend that local, state and federal government policy and programs identify and resource strategies to assist WISI to increase their access to justice.

Context for this submission

Who we are:

Project Respect is a feminist, non-faith based, non-profit community based organisation offering a support and referral service for women trafficked for the purpose of sexual exploitation, and women in the sex industry. We recognise that discrimination, violence and exploitation of women in the sex industry is significant, widespread and harmful. Human rights are fundamental to our work and we believe that all women have the right to feel safe and respected. Project Respect plays a unique role in connecting women in the sex industry and women who have been trafficked to essential services. We regularly visit brothels in greater Melbourne to provide support for women when needed. To date in 2017, we have undertaken 120 visits to brothels and met 237 women, of which approximately 60% are from culturally and linguistically diverse (CaLD) backgrounds. We also provide training and support to other organisations so they can better understand the experiences of women in the sex industry and women trafficked. Project Respect is a member of the Senior Officials' Meeting of the National Roundtable on Human Trafficking and Slavery (The National Roundtable) and the Labour Exploitation Working Group, both facilitated by the Australian Attorney-General's Department.

Source material:

This submission draws on information from several sources: from academic and other literature, from the experience of Project Respect staff, from Project Respect data and research, from existing

Project Respect submissions and, importantly, from the expert views of women in the sex industry. This is supplemented by examples from Project Respect's work with women.¹

Concepts in and scope of this submission

The sex industry is deeply gendered. Internationally and in Victoria, while some women buy sexual services and some men sell sexual services, sexual services are, overwhelmingly, bought by men and sold by women (and at times children). Reflecting this, and the fact that Project Respect works with women in the sex industry, this submission will focus on the experiences of women in the sex industry who experience difficulties in accessing justice.

When referring to women in the sex industry, we reference their experiences both within and outside the sex industry.

Project Respect recognises that not all women in the sex industry experience discrimination, violence or exploitation in the sex industry or outside it. However, based on our work with women, the testimony of women in the sex industry, and local and international research, we recognise that discrimination, violence and exploitation of women in the sex industry is significant, widespread and harmful. This submission reflects the pervasive and particular nature of discrimination, violence and exploitation experienced by women in the sex industry, and speaks to this reality.

We celebrate women's resilience, the choices they make in difficult circumstances, and the diversity of women's experiences. By addressing structural and systemic issues, even where doing so raises difficult and challenging issues, we aim to lessen the barriers to all women fully accessing their rights to safety, security and freedom.

The sex industry is an area of disagreement amongst feminists. The language used to describe the sex industry reflects this disagreement. A range of language is used in this submission; however, on the whole, the language reflects our view that the sex industry is harmful to many women in it, and is based upon and reinforces gendered inequality.

The sex industry in Victoria

The sex industry in Australia is regulated by States and Territories and is either legalised, decriminalised or criminalised. Project Respect works in Victoria where the sex industry is legalised for indoor prostitution and escort work. Street prostitution in Victoria is criminalised. Our observations are predominantly within the Victorian context.

There are currently approximately 89 licensed brothels in Victoria, over 600 operator-owned sex businesses and an estimate of 500 massage parlours operating as illicit massage businesses. There is no reliable, up-to-date estimate of how many women are involved in the sex industry in Victoria. Further research is needed to establish the scope and impact of the Victorian sex industry.

This submission addresses the following terms of reference:

- 1) What else works, and why? In what circumstances, and for whom?
- 2) How can the legal profession better support 'joined-up' and collaborative service delivery with other sectors? What can it learn from other sectors in this regard?

¹ Women's stories are de-identified.

- 3) What should be the highest priorities for future action which would deliver the greatest benefits given limited resources,
 - a. for each disadvantaged group listed in the Terms of Reference?
 - b. at the systemic level, given the overlapping themes raised across several group discussed in The Justice Project papers?
- 4) What measurable indicators would signify that progress was being made for each group, having regard to the highest priorities for future action? Could these be based on existing data sources, or would new ones be required? Would a Justice Index tool be a useful addition in this regard?
- 5) What mechanisms would help to support the development of policies and laws in this area which are more evidence-based?
- 6) How else can the Law Council best complement existing efforts to ensure that vulnerable individuals can better access justice?
- 7) What case studies illustrate how the justice system can help people experiencing disadvantage successfully? Alternatively, what case studies illustrate the difficulties faced when their needs go unmet? What factors led to these outcomes?

Introduction

Context of compounding disadvantage for women in the sex industry

The sex industry is a catchment area for women who experience violence, exploitation and disadvantage. Women's experience of violence while they are in the sex industry, including family violence, is frequently compounded by discrimination and disadvantage and the complex impacts these create.

For example, in 2011-2012, 77 per cent of the 714 women Project Respect spoke with were experiencing housing stress (with 23 per cent of the women being homeless) and 36 per cent said they gambled excessively. Additionally, from our work with women, we know a large number of women have mental health issues and issues with drug and alcohol. We observe a disproportionate number of women in the sex industry were wards of the state as children and/or are former prisoners. Many women are single mothers, which means that they often experience financial stress.

In an Australian survey, Perkins and Lovejoy (1996) found 60 per cent of surveyed women in the sex industry reported feeling stressed, 28 per cent reported chronic fatigue, 33 per cent reported emotional anxieties, 36 per cent reported depression, 20 per cent reported feelings of isolation, and 31 per cent reported loss of sexual pleasure.² As a consequence, according to Powell and Nagy (2014), women in the sex industry in Australia were 'less likely to be satisfied or completely satisfied with their homes, their employment conditions, their financial situations, how safe they felt, how connected they felt with their communities, their health, the neighbourhoods which they inhabited or how satisfied they were with life overall (Bilardi et al, 2010)'.

In addition to these forms of disadvantage, significant numbers of women in the sex industry experience poverty, both as a push factor leading them into the sex industry and while they are in the sex industry. This is in contrast to the community view that women in the sex industry make a great deal of 'easy' money. According to Powell and Nagy, 'In comparison to Australian working women generally, women in brothels were more likely to be unable to pay their utilities in the past 12 months (25% vs 13%), pay their mortgage or rent on time (36% vs 7%), went without meals (11% vs 3%), asked friends or family for financial help (37% vs 15%) and sought out welfare benefits (15% vs 2%) (Bilardi, 2010).' Many of these factors are likely to exacerbate the impact of family violence, and create barriers to women escaping violence and seeking support to access safety.

Further, the sex industry is also a high risk industry for potential exploitation of Australian citizens, Australian permanent residents or temporary immigrants. This is based on our experience working with women³ directly and, through brothel outreach since 1998. Our work indicates, that women from the sex industry continue to experience exploitation or are at risk of being exploited. This is underpinned by the fact that workplace laws that exist in other legalised work industries to protect employees do not apply for women in the sex industry. Women in the sex industry are incorrectly employed as independent contractors and not covered under the Fair Work Act 2009. This excludes women from protection such as regulations for minimal wage, work health safety, maximum duration of working shifts and work cover. Whilst regulations exist for brothel compliance for safe sex practices, they are not adequately controlled.

Moreover, many women in the sex industry are newly arrived in Australia. For these women, their visa status can create difficulties, including when seeking, legal support, refuge accommodation or

² Powell, A. and Nagy V. (2014). *The Harms of Indoor Prostitution on Women: A Research Review*. Background paper prepared for *Project Respect*, Melbourne.

when trying to leave a man who uses violence against them. For some women, visa restrictions mean they cannot get a job in other industries, but find brothels will employ them without a working visa. This creates the environment for exploitation in the sex industry to occur.

It is very common for women to be expected to work extremely long shifts without earning any or very little money, women may sleep at brothels and therefore are expected to be available even when they are not on shift, women – particular women new to the sex industry or from CaLD backgrounds – are unlikely to be informed about their rights, laws and regulations in the sex industry. Many women are expected to provide sexual services without condoms and customers can often be violent and abusive towards women or women can be forced to perform sexual acts they have not consented to, for example anal sex. Crimes that occur in the sex industry generally are not reported, due to stigma related to the sex industry and a lack of knowledge regarding their rights.

Additionally, Project Respect would like to highlight the ongoing increase in illegal brothels within the Greater Melbourne area. Information Project Respect has researched, as well as received from local council officers, Victorian Police Sex Industry Coordination Unit (SICU) and other Australian government organisations indicated that women, often from Asian backgrounds on temporary visas engaging in the illegal brothel sector are at serious risk of exploitation, violence, sexual and physical assault. SICU further indicated, that the women's sexual health and health is of a concern, particularly due to the demand to provide sexual services without condoms. Evidence that supports these risk factors is also available in online forums⁴ used by purchasers of sex where sexual services without condoms are advertised and purchasers of sex review their experiences, including physical and sexual violence they perpetrated against women.

1) What else works, and why? In what circumstances, and for whom?

Call for a new legislative approach

Project Respect submits that the forms of legalisation and decriminalisation currently in place in Australia have failed in their aims to protect women in the sex industry and combat organised crime and human trafficking and subsequently a different approach is needed. Australia has a mishmash of laws and regulations pertaining to the sex industry with each state incorporating different criminal, licensing and planning controls to different types of sex work within the sex industry. The various approaches to prostitution employed by states in Australia have all been unsuccessful in their aims.

Project Respect believes that a nationally cohesive position on prostitution would allow for a coordinated approach to the sex industry and be effective in reducing harm, criminal involvement and reducing trafficking into the Australian sex industry. Project Respect joins a growing list of frontline human trafficking support organisations and prostitution survivor groups⁵ in urging our government to adopt a legislative approach such as the Sex Buyer Law that targets the demand of sexual services and supports women.

⁴ Online forums Project Respect frequently investigates are: The Naked Truth, Gumtree (www.gumtree.com.au). Locanto (locanto.com.au)

⁵ For example see; Institute for Feminism and Human Rights, the European Women's Lobby, Equality Now, Eaves charity for women, the London Abused Women's Centre, Terre Des Femmes, Resistenza Femminista, SPACE International, Kvinnofronten, Sex Trade 101, Vancouver Rape Relief, AF3IRM, Apne Aap and the Victims of Prostitution and Poverty Alliance, Nordic Model Now, and the Coalition Against Trafficking in Women Australia.

The Sex Buyer Law

The Sex Buyer Law is a legislative framework that has proven to be effective in targeting the demand for sexual services. The Sex Buyer Law is an asymmetrical legislative approach that makes it a criminal offence to purchase sexual services, while at the same time it decriminalises the selling of sexual services. This has a two-fold approach in changing social and cultural attitudes to purchasing of sexual services, while also better protecting WISI and women trafficked from being criminalised for their involvement in the industry, particularly in the illegal sector.

The Sex Buyer Law originated in Sweden as the 'Swedish Model' and has been adopted in Norway, Iceland, Canada, Northern Ireland, Ireland, France and is being considered in Israel, Scotland and Lithuania. Countries that have adopted the Sex Buyer Law have seen a reduction in the demand for sexual services and a decrease in human trafficking.⁶

The Sex Buyer Law recognises prostitution as a form of violence against women and that the sex industry is incompatible with women's equality. This approach comes from an understanding of the structural inequalities that preclude women from reaching equal status to men and recognises the gendered nature of the sex industry. Sex buyers are [mostly] men abusing their greater social and economic power when they purchase [mostly] women for sex.⁷

The Sex Buyer Law is the only approach that addresses the demand for sexual services and human trafficking by criminalising sex buyers as well as third parties that profit from the sex industry such as; pimps, brothel owners and agents. It simultaneously decriminalises and supports the survivors/victims of prostitution and trafficking by removing any criminal offence and offering increased social support services and exit strategies.

Project Respect believes that criminalising the purchase of sex would have a significant impact on trafficking in to the sex industry. Australia would be a far less attractive and less profitable market for sex traffickers or 'sex business owners looking to exploit workers' if Australian domestic laws did not support the sex industry.

Human Rights Approach

The current support system does not protect the rights of WISI and trafficked women and is not effective in supporting women to access justice. There is a lack of understanding regarding trauma resulting from trafficking for sexual exploitation, and a subsequent disconnection between the need to safely and effectively engage with women experiencing trauma and the expectations for survivor/victims to cooperate with authorities. Project Respect believes that if survivor/victims were better supported and had longer periods of time to address trauma they would be more able and willing to meaningfully participate in criminal proceedings.

Additionally, in our experience many women want to prosecute their traffickers but are not given adequate time to recover and access basic services before they get involved, which impacts their health and the quality of involvement. The current focus on prosecution is deemed more important than support to the victim/survivor and, subsequently, the experience

⁶ Meagan Tyler, Kathy Chambers, Sheila Jeffreys, Sue Leigh, Caroline Norma, Kate Phelan, & Kaye Quek, 'Demand Change: Understanding the Nordic Approach to Prostitution,' (2013) Coalition Against Trafficking in Women Australia <http://catwa.org.au/files/images/Nordic_Model_Pamphlet.pdf>

⁷ Ane Mathieson, Easton Branam & Anya Nobel, 'Prostitution Policy: Legalization, Decriminalization and the Nordic Model,' (2015) 14 (2) *Seattle Journal for Social Justice* 367-428.

of trauma is exacerbated for the survivor of human trafficking. As a result, the criminal justice system's effectiveness is hindered.

We call on the government to take a survivor centred human rights approach to survivor/victim support schemes and de-link human trafficking visas from criminal proceedings. We believe this approach will result in higher quality evidence and witness participation. Ultimately, longer visa times and comprehensive support would lead to a higher conviction rate acting as a deterrent to traffickers.

Recommendations:

- Australia targets the demand of purchasing sexual services through implementing a Nordic Model decriminalisation approach to the sex industry
- Support for survivors/victims of trafficking should be delinked from criminal justice proceedings as support should not be conditional on, or otherwise related to, the success of criminal proceedings.
- Longer reflection periods and stronger visa pathways should be provided to survivor/victims that are not dependent on criminal justice proceedings.

2) How can the legal profession better support 'joined-up' and collaborative service delivery with other sectors? What can it learn from other sectors in this regard?

There is no one sector, agency, department or organisation who can appropriately and adequately address the systemic and structural issues prevalent in the sex industry, yet, better and more successful legal outcomes for WISI engaged within the justice system would increase the awareness and capacity of WISI and women trafficked to access the justice system. To foster this, Project Respect recommends that the legal profession engage in holistic service provision for clients with complex needs, such as women in the sex industry and women trafficked, similar to that which occurs in some community social welfare spaces. This type of service provision should be underpinned by strategic partnerships that identify key services that can support women through the criminal justice process.

These partnerships should include, but are not limited to,

- mental health
- financial counselling and support
- family violence case support
- housing, homelessness services, and more

Holistic service provision may require outward referrals to external agencies that can support the needs of clients beyond their legal issues. Psychological, social and emotional support can help a client. Additionally, the justice system can be overwhelming and difficult to navigate. Linking WISI and women trafficked in to relevant support services would mitigate women from disconnecting from the justice system. This type of holistic service provision will help ensure women's social, health and welfare outcomes, which can enable greater success throughout the criminal justice process.

Recommendation:

- Holistic case-coordination/care from the broad spectrum of services is undertaken for all WISI and women trafficked as they navigate the justice system

3) What should be the highest priorities for future action which would deliver the greatest benefits given limited resources

Within the limited resources, Project Respect believes, for women in the sex industry and women trafficked, the following needs to be considered the highest priorities for future action:

1. The Law Council should recommend that the state, federal and local governments recognise WISI as a vulnerable group and as a specific cohort, and recommend that local, state and federal government policy and programs identify and resource strategies to assist WISI to:
 - a) Improve their ability to access justice, free from discrimination and stigmatisation;
 - b) increase their awareness of the legal services available to them;
 - c) improve their legal literacy generally; and
 - d) increase their knowledge and understanding of their rights and obligations.
2. Building the Necessary Skills and Expertise
The Law Council should recommend that individuals engaged in the legal profession undergo training, as part of their continued professional development, to:
 - e) Improve their understanding of the sex industry, Victorian sex work laws, regulation and policies;
 - f) further their understanding of the specific issues that WISI encounter when attempting to access justice and the legal system; and
 - g) further their understanding of the common legal issues faced by WISI.

This targeted training should be provided by or in consultation with organisations with a specialised understanding of the aforementioned issues, such as Project Respect. The difficulties that WISI and other vulnerable groups encounter when attempting to access justice should be incorporated into the curriculum for law students across Australia.

Project Respect believes, in order to foster better outcomes for women in the sex industry, the broad spectrum service system needs to be knowledgeable about and responsive to the needs of WISI and women trafficked. Increasing the capacity of the service system break down the entrenched stigma and discrimination WISI experience. More positive experiences when accessing services will increase the likelihood of women accessing services, including the justice system.

As a specialist service working with WISI and women trafficked for sexual exploitation, Project Respect is best placed to customise our current professional development program or, alternatively, contribute to discussions on developing customised training for the legal profession as a subject matter expert.

Project Respect also believes that the Law Council via the state-based bodies, such as the Law Institute of Victoria, has a role to play in connecting qualified lawyers and law students with professional development and education to ensure that those in the legal profession are aware of

and responsive to the issues of exploitation and experiences of violence that women in the sex industry can experiences.

3. Conduct an audit on the Victorian sex work laws and regulatory frameworks

The sex industry is regulated by many different enforcement and compliance authorities, however there is little harmonisation or coordination between these bodies to ensure instances of human trafficking, labour exploitation or more broadly the issues with the welfare of women in the sex industry are identified.

In addition to this, with the complexities of employment law, women in the sex industry may not fully understand their civil and labour rights and not self-identify as being exploited, despite the conditions in which they find themselves fitting the description of exploitation. Compounding this is a fear of authorities, cultural and linguistic barriers and, involvement in an industry which is heavily stigmatised and sometimes illegal in their country of origin. This prevents women from speaking out and/or seeking assistance about harm and exploitative conditions through the justice system.

There is substantial scope to bring together the range of authorities indicated above to identify women in the sex industry who may be experiencing harm or exploitation. Further training should be undertaken around the sex industry, human trafficking, labour exploitation and working cross-culturally to increase their awareness and capacity to understand the complexities of the sex industry, as well as their responsiveness to situations of exploitation.

This also applies, even more so, to illicit massage businesses. However, compounding these structural disconnections in enforcement and regulation is the shifting of responsibility of who should be tasked with resource allocation to target illicit massage businesses. As the 2009 CAV report indicates, “[w]ith the exception of CAV, all other enforcement officers interviewed indicated that their agencies view irregular sexual service activity **as low to very low priority in these situations**” (original emphasis) (Pickering, Maher, Gerard, 2009, p. 39). There is a lack of systematic recording and sharing of information, as well as an interagency approach to addressing the issue of illicit massage parlours, and while this provides the opportunity for crime to flourish, it also provides the conditions for women to experience severe exploitation.

4. Implement comprehensive and appropriate screening mechanisms to Improve identification rates of women experiencing harm in the sex industry, including being exploited, survivors of trafficking and labour exploitation

There is little harmonisation or coordination between local, state and federal bodies to ensure survivor/victims of human trafficking are identified and subsequently referred to the AFP for investigation. From our long standing work with women in the sex industry, with authorities, understanding the patchwork of regulation and compliance of the sex industry and, work in the area of human trafficking, we believe agency staff lack sufficient training and skills in the identification of survivor/victims which is further impeded by significant breakdown in cross-agency information sharing. Where lawful and appropriate to do so, there should be a whole of government approach to information and intelligence sharing.

Comprehensive training on the sex industry and human trafficking should be mandated for all agency staff, at all levels of government, who perform a role in regulating high risk industries such as the sex industry. To further enhance survivor/victim identification, a multi-sectoral and locally-based framework should be implemented.

Fostering a collaborative inter-agency, multi-sectoral and human rights approach will strengthen Australian legislation by increasing identification of survivor/victims, increasing the capacity of the survivor/victims to disclose their experiences which will in turn increase the likelihood of successful prosecutions and subsequent access to justice.

5. Linking the Sex Industry with Human Trafficking

Project Respect would like to underline the explicit link between the sex industry and human trafficking. Furthermore, Project Respect recognises human trafficking as a form of modern slavery that is prevalent in both the legal and illegal sectors of the sex industry. The sex industry operates on a supply and demand basis. Legalisation and decriminalisation have normalised and legitimised the sex industry and the purchasing of sexual services, and there has been a subsequent growth in the number of sex industry businesses and the overall profitability of such businesses.⁸ The licensed sex industry alone generates over \$182 million per year with a net profit \$48.9 million.⁹

Project Respect's on the ground experience suggests the demand for sexual services has translated into growth in both the legal and illegal sectors. This growth in the sex industry across the board has facilitated opportunities for trafficking in order to meet this demand. In Australia, in particular, there is a high demand for women of Asian nationality. This is evidenced by the plethora of websites and punter forums advertising women in the sex industry of particular ethnicities, races and ages.¹⁰

Recommendations:

- Recognise WISI as a vulnerable group and as a specific cohort, who encounter compounding barriers in accessing justice.
- The legal profession undergo training specifically on the sex industry and human trafficking as part of their continued professional development
- The state government conduct an audit of Victorian sex work laws, regulations, policies and programs to identify opportunities for reducing harm and exploitation while recognising the gendered nature of the sex industry and the link between gendered inequality and violence.
- The state government amend the Sex Work Act to make it an offence to willfully, knowingly or recklessly have sex with a trafficked person, or with other persons in the sex industry without their consent.
- Implement comprehensive and appropriate screening mechanisms to Improve identification rates of women experiencing harm in the sex industry, including being exploited, survivors of trafficking and labour exploitation

⁸ Mary Sullivan, & Sheila Jeffreys, 'Legalising prostitution is not the answer: the example of Victoria, Australia', (2011) Coalition Against Trafficking in Women Australia <<http://www.catwinternational.org/Home/Article/95-legalizing-prostitution-is-not-the-answer-the-example-of-victoria-australia>>

⁹ IBISWorld <<https://www.ibisworld.com.au/industry-trends/market-research-reports/personal-services/brothel-keeping-sex-worker-services.html>>

¹⁰ For example see; Punter Planet, Locanto, International Sex Guide.

4) What measurable indicators would signify that progress was being made for each group, having regard to the highest priorities for future action? Could these be based on existing data sources, or would new ones be required? Would a Justice Index tool be a useful addition in this regard?

While a Justice Index tool such as the model implemented by the US could be a useful addition in theory, its success would be dependent on ability to access reliable data. Because WISI experience such significant stigma and discrimination, women are unlikely to disclose their status of being in the sex industry when seeking legal advice and support, which means that data is difficult to collect and quantify, and that existing data may be incomplete. This also applies to victims/survivors of trafficking for sexual exploitation due to the hidden nature of the crime and infringement upon the victim/survivor to freely move around and access services.

Project Respect referred eight women to legal services from January 2016 to present. The majority of referrals have been in relation to issues pertaining to working without a license, human trafficking, and immigration. While many women who have presented to Project Respect have been victims of a crime, most do not want to pursue justice due to lack of belief in the legal system. They report not being believed or supported by police, and having their witness testimonies discredited due to their involvement in the sex industry. A 1998 study of 130 women working in prostitution found that 82% had been physically assaulted, 83% had been threatened with a weapon, and 68% had been raped while working.¹¹ The combination of heightened vulnerability to violence and lack of trust in the legal system leaves women in the sex industry in a uniquely disenfranchised position when it comes to accessing justice.

A signifier of progress for WISI would be an increase in reporting violence to police, and an increase in perpetrators being charged as a result. To measure this progress, it would be beneficial to have a database tracking violence committed against WISI, similar to the Victorian Family Violence Database. Data on violence against women in the sex industry collected by organisations such as Project Respect and government agencies would be compared to the number of police reports made by WISI, and the number of convictions made as a result.

Recommendation:

- Investigate what measures, statistics and data relating to WISI and women trafficked can be collected while protecting the privacy and safety of women in the sex industry.

5) What mechanisms would help to support the development of policies and laws in this area which are more evidence-based?

The Law Council should engage with front-line workers and organisations, like Project Respect, who support WISI and victims/survivors of trafficking. Project Respect has a wealth of knowledge and data regarding the experiences of WISI, the victims and survivors of trafficking and the sex industry generally, dating back to 1999. This engagement could be in the form of a submission provided by Project Respect or a targeted training conducted by Project Respect. Individual victim/survivors of trafficking and women currently or formerly in the sex industry should be consulted so that their experiences can inform the development of policies and laws.

¹¹ <https://www.ncbi.nlm.nih.gov/pubmed/9698636>

Recommendation:

- The Law Council of Australia should consult with Project Respect specifically on how to better support women in the sex industry and women trafficked to access justice.

6) How else can the Law Council best complement existing efforts to ensure that vulnerable individuals can better access justice?

Advocacy, Communication and Civic Engagement

- The Law Council should recognise that the sex industry (in both legal and illegal sectors) be recognised as a high-risk industry for human trafficking, wage and labour exploitation, and slavery.
- The Law Council should advocate nationally and internationally for a human-rights based approach to meeting the needs of WISI.

Building Community Legal Literacy and Capacity

- The Law Council should encourage existing efforts to improve legal literacy amongst the community generally and among WISI and other vulnerable groups specifically.
- The current Australian school curriculum should incorporate some basic education regarding the availability of legal services, the structure of the justice system within Australia and individual rights and obligations.

Law Reform

- The Law Council should advocate nationally and internationally for higher penalties for breaches of the Sex Work Act 1994 (Vic).

An increase in the number of breaches successfully and harshly prosecuted is likely to:

- a) Discourage breaches; and
 - b) encourage WISI to report exploitation and abuse more frequently and thus improve their engagement with the justice system.
- Recommend that the state, federal and local governments recognise WISI as vulnerable group and as a specific cohort, and recommend that local, state and federal government policy and programs identify and resource strategies to assist WISI to:
 - a. Improve their ability to access justice, free from discrimination and stigmatisation;
 - b. increase their awareness of the legal services available to them;
 - c. improve their legal literacy generally; and
 - d. increase their knowledge and understanding of their rights and obligations

Recommendations:

- Advocate nationally and internationally for higher penalties for breaches of the Sex Work Act 1994 (Vic).

- Recommend that the state, federal and local governments recognise WISI as vulnerable group and as a specific cohort, and recommend that local, state and federal government policy and programs identify and resource strategies to assist WISI to increase their access to justice.

7) What case studies illustrate how the justice system can help people experiencing disadvantage successfully? Alternatively, what case studies illustrate the difficulties faced when their needs go unmet? What factors led to these outcomes?

Case study: access to justice successful

Case study 1.

Ms Ti is on a student visa and is currently being supported by Project Respect.

Project Respect recently began supporting Ms Ti, a trans-gendered woman who is currently working in the sex industry. Ms Ti has been arrested multiple times for engaging in street-based sex work, and other sex-work related offenses. She is fearful that she will lose her student visa if she is charged for illegal sex work and will have to spend time in prison. She feels very socially isolated.

Project Respect linked Ms Ti into a legal and advocacy service for women. Her lawyer then connected Ms Ti to another lawyer, who works for a women in the sex industry (WISI) friendly organisation. Her lawyer, Ms H, will advocate for Ms Ti's case to be heard in a WISI friendly court that deals specifically with street-based sex work offenses. Ms Ti reports to Project Respect that Ms H consistently describes the legal process to her, outlining Ms Ti's options and giving her non-judgmental, rights-based advice. Ms Ti feels supported by her lawyer, and describes that there is constant transparency throughout the process.

Through Ms H and Project Respect, Ms Ti is linked in to multiple services including different legal support services. She continuously expresses to Project Respect staff that she feels supported and looked after throughout the pre-trial process. Although Ms Ti expresses that she feels socially isolated and stigmatised, she describes that this treatment has not extended to her interactions lawyers and legal bodies.

Case Studies: poor access to justice

Case study 2.

Chen is from Asia. She is divorced and has two children who are living with her ex-partner in Asia. She immigrated to Australia to be with her new partner. They got married. She agreed to move to Australia under the promise to be in an equal and respectful partnership. Once she arrived in Australia, she experienced serious forms of family violence and other forms of exploitation, such as domestic servitude. She was under her partner's control and forced to work for her partner. She had to be available 24/7. This included work without being paid in her partner's factory. Chen was forced to do all the household work and other domestic duties and provide sexual services to her partner multiple times a day against her consent. Her partner was severely violent towards her and she was physically assaulted on multiple occasions. She was denied food and, in summer her partner didn't

allow her to use the air conditioning whilst in winter, she was denied to use the heater. When her children visited they also were denied food and adequate living conditions. She was “allowed” to engage in the sex industry to provide food and other basic necessities for herself and her children. Her children were supposed to stay in Australia with her and her partner. They went on a trip to her country of origin, however her partner didn’t allow for the children to return to Australia and stopped them from travelling. We met Chen during brothel outreach. Project Respect suspected that Chen may have been trafficked to Australia by her ex-partner, but she opted out in being referred to AFP and was not able to access the Support for Trafficked People Program. She didn’t believe that AFP could assist her as she voluntarily moved to Australia and voluntarily married her partner. She reported the crimes perpetrated against her to the local police and her case was investigated as a family violence case. Her partner was sentenced to three months of jail time for family violence offences. Human Trafficking indicators were not recognised or reported on. We believe that if Human Trafficking indicators had been taken into account, her case would not solely have been treated as family violence and that the sentence could have been stricter.

Case study 3.

Simone had to flee her country of origin due to wrong imprisonment by the government. She had to leave the country without passport or other travel documents. During her escape she met her trafficker. She described him as a very wealthy man. He smuggled her across borders to a neighbouring country. He locked her up, sexually assaulted her and controlled her. He deceived her by stating that he has a model agency in Australia and that she could work for him. He promised her that she would become famous. He said that he will organise travel for her. One day the perpetrator told her she had to travel to Australia. Simone was concerned that she didn’t have a passport. He forced her to travel to Australia using false travel documents which he organised for her. Simone was worried about travelling on false documents and that she could get arrested for it, however Simone did not have a choice other than leaving for Australia. The perpetrator provided her the address details of his alleged modelling agency. Upon arrival Simone went to this address. She discovered that this was not a model agency but a brothel. For unknown reasons she was able to leave the premises.

Project Respect informed AFP about Simone’s case in an off- the-record conversation. AFP indicated that they could not open an investigation as crimes, such as the recruitment, deception and coercion to travel, happened overseas and outside of the criminal code. The United Nations definition of Human Trafficking clearly states that human trafficking occurs for the purpose of exploitation. (United Nations 2000:Article 3, page 2) In Simone’s case recruitment, deception and her movement across borders happened for the purpose of exploitation in the sex industry, yet protection was denied. She later was arrested due to entering Australia on false travel documents and is now facing criminal charges.

Case study 4.

Ms EL is a survivor of human trafficking and currently being supported by Project Respect.

Project Respect has known and worked with Ms EL for approximately three years. She was referred by another woman who was also supported by Project Respect. Ms EL experienced extreme sexual exploitation and abuse in Australia, from which others have profited financially. At the time of

trafficking and exploitation, Ms EL (like other trafficked women), was unaware of any help or support she could access from government authorities or welfare agencies.

When Ms EL decided to provide evidence to the Australian Federal Police (AFP), she stated that she wanted to prevent more trafficking victims by helping the investigation. The Australian Federal Police acknowledged Ms EL is a victim of trafficking, and placed her on the Support for Trafficked Person's Program, as she continued to provide them with evidence about her traffickers. During this time she has established a life for herself in Australia and has taught herself English. She has studied for more than 1 year, facilitated by Red Cross on the Australian Support for Trafficked Persons Program. In February 2014, Ms EL was evicted from the program and AFP reasoned that the investigation would not lead to any convictions. Ms EL applied for a protection visa and continued to receive support through the Migration Support Program. She now has reached the last stage of her visa assessment and will very likely be deported back to South Korea where the sex industry is illegal.

Project Respect is concerned that Ms EL's recovery will be damaged and her safety will be compromised if she is deported from Australia and forced to return to South Korea. While Ms EL was providing evidence to the AFP, she experienced Post-Traumatic Stress Disorder (PTSD) symptoms such as frequent, recurring dreams, re-experiencing physical pain, flash backs, constant nervousness, an inability to sleep, anxiety, depression, suicidal thoughts and behaviour and chronic fearfulness. She is still suffering from persistent emotional and physical stress. Project Respect believes she needs stability and consistent treatment to recover from her trauma, and that Australia has a duty of care to provide this, given her valuable engagement with the Criminal Justice Process.

Project Respect is concerned that the traffickers may exact retribution on her at any time due to her assistance to the Australian authorities. In addition, being forcibly repatriated to South Korea would mean that after many years of uncertainty and fear, she would have to re-establish herself again, again in a context of uncertainty and fear. In South Korea women still get prosecuted for doing sex work. This results in having to pay a significant fine or they are sentenced to community service or probation. The criminal record follows them for their entire life. Even though women might have been doing sex work in another country, such as Australia, women still may get charged for these actions in South Korea. Further, in the media, Korean women in the foreign sex industry are regarded as a shame on the nation. For example, in 2012 the Korean police held a press conference reporting on a number of women who were charged by Korean police due to the women's involvement in the Australian sex industry.

Case study 5.

When conducting outreach to a Melbourne brothel, Project Respect outreach workers were approached by a woman, Ms Lin. She articulated that her friend engaged with a client in a legal brothel who removed the condom without her consent during sex. Ms Lin described that stealthing—non-consensual removal of a condom—is common practice by clients in brothels.

Ms Lin said that her friend feared for her safety and health, and experienced emotional trauma from the interaction with the client. According to Ms Lin, her friend's manager told her to contact the police to report the incident. However, Ms Lin's friend does not speak English and is unaware of the laws regarding condom removal in sex work, and whether this amounts to sexual assault. Ms Lin told Project Respect outreach workers that many women in the sex industry (WISI) are fearful of the authorities and do not know the laws upholding the rights of workers. Women who are from culturally and linguistically diverse (CALD) backgrounds are even less likely to report experiences of

sexual assault due to stigma, lack of understanding about the laws protecting their rights and fear of authorities.

Ms Lin told Project Respect outreach workers that brothel managers commonly do not outline the legal rights that WISIs have, leaving them unaware of proper mechanisms to utilise when violence, abuse and sexual assault occurs. Ms Lin asked Project Respect why there is not more transparency in the Victorian legal system and surrounding laws that apply to sex workers. She also wondered why the industry is not more regulated in order to hold men accountable for non-consensual conduct. Ms Lin articulated that as a WISI she does not feel protected by the legal system in Victoria, and feels like she does not have a proper avenue for deciphering and reporting illegal conduct in the brothel.

Case study 6.

Karen¹² is an Australian woman. When she met her partner, he pressured her to move interstate to be with him. She left friends and family behind to be with him. Once she moved interstate her partner started becoming violent towards her and developed controlling behaviours. She also found herself isolated from family and other support systems and became emotionally dependant on her partner. Her partner forced her to work in the sex industry. She was forced to work extremely long shifts for seven days a week over multiple years she had barely any days off. She was forced to give him all her earnings and to earn a certain amount of money each day. If she didn't earn enough, he would be violent and beat her. It took her multiple years to leave her partner. She now has mental health and severe reproductive health issues due to exploitation she experienced in the sex industry. She never reported these crimes to the authorities.

¹² All names and identifying details have been changed to protect the identity of the individuals involved in the case study