

The 'Consumer Legislation Amendment Bill 2019' (CLAB 2019) contains amendments to the 'Sex Work Act 1994'. CLAB 2019 is now before the Legislative Council (the Upper House of Victorian Parliament). The amendments address the fact the 'exempt register', containing information on private escorts in Victoria, held under section 24 of the 'Sex Work Act 1994', was breached via Freedom of Information (FOI) process and currently remains able to be accessed in this way. When passed, the amendments contained in CLAB 2019, will prevent access to sex workers' data contained on the 'exempt register' via FOI in the future.

Information that Vixen Collective has previously provided on this matter on this can be found under the heading 'Breach of 'exempt register' risks sex workers safety and Consumer Legislation Amendment Bill 2019 (CLAB 2019)', here:

<http://vixencollective.net/legal/latest-legal-info/>

Sex worker organisations have long opposed sex workers being made to register, the fact that this information is held by regulators/governments, and have called for the removal of sex worker registers as well as the removal of all information held on such registers, as part of campaigning for the full decriminalisation of sex work. But while registers still exist, it is the duty of government to ensure this information is secure.

Some concerns have been raised about wording changes relating to police immunity in CLAB 2019 and over access to individual sex workers' data on the register in the future, we would like to provide feedback on these issues now.

Vixen Collective has directly contacted government seeking clarification on the legislation, have sought independent expert legal advice on these matters and have worked with Scarlet Alliance, Australian Sex Workers Association, to coordinate providing information back to community. It is based on this feedback, advice and on consultation within our own community that we respond.

Feedback from Victorian Government

The Department of Justice and Community Safety (DJCS) has corresponded with Vixen Collective, on behalf of Hon Minister Marlene Kairouz (Minister for Consumer Affairs) on the 21st of November to indicate that:

- Changes made are not intended as an increase of police powers but are "changes aimed at increasing security of the exempt register".
- The new sub-section, 87 (2A) does not protect police officers if they are found to be acting outside of their legal duties.
- Sex workers on the 'exempt register' who wish to access their own data remain able to do so via the Business Licensing Authority (BLA).

The full statement from DJCS is attached as a PDF on this page.

Independent Assessment of Amendments

Independent legal advice we have received regarding the amendments is that they likely provide an *expansion of secrecy requirements* in relation to the recording or disclosure of information within the 'exempt register'.

The amendments now also prevent the recording or divulging of information regardless of whether or not that information directly concerns a person.

Put simply, the secrecy provisions have been expanded and this change limits risks that sex workers can be identified, even indirectly.

Police immunity:

Under the current 'Sex Work Act 1994', section 88 (Immunity), already provides very broad immunity for police officers, this is not altered by the amendments in CLAB 2019. In certain circumstances the Crown/State of Victoria is liable for a police officer's conduct that has caused loss/damage.

Put simply, police already have immunity under the current Act, and they have a lot of it – it's hard to see how the amendments could really give them much more than they already have.

The new section 87 (2A), contains a section of text that states:

"A police officer does not commit an offence against subsection (2) if the police officer records or divulges to any person any information that is in the register referred to in section 24(2), whether or not that information concerns a person, if the recording or divulging is carried out in the performance of duties by the police officer under or in connection with any Act."

This text has made some people concerned.

What is key here is that police have to show that they are simultaneously acting "in the performance of their duties" and that this action is "under or in connection with any Act", meaning an Act in law.

The 'Sex Work Act 1994' defines the 'exempt register' and specifies the parties who have lawful access. Acts that have particular relevance here are the 'Victoria Police Act 2013', which defines some of a police officer's duties and powers, and the 'Charter of Human Rights and Responsibilities Act 2006' which speaks to decisions of public authorities that fail to give proper consideration to relevant human rights. The actions of police remain governed by these Acts and other laws.

This can be seen as a broadening of the ability of police officers to record or divulge exempt sex work service provider register information, however not without the restrictions outlined above.

Put simply, the police have powers under law but there also are restrictions on these powers under the law. The amendments do not provide protection to police if they reveal information from the 'exempt register' where it isn't something they were meant to be doing as part of their job. In fact, for revealing information to be lawful it has to be something they were meant to be doing as part of their job AND also permitted under an Act of law.

Freedom of Information (FOI) access/access to sex workers own data:

As already indicated in Vixen Collective's prior statement on this matter, feedback from Victorian sex workers has clearly indicated that workers do not wish members of the public to be able to access information from the 'exempt register' via FOI and the removal of this access is seen as a positive development.

The amendments do not alter the way in which sex workers register, amend information or interact with *their own data* that is held on the 'exempt register'.

Sex workers provide their data on registration to the Business Licensing Authority (BLA) and can check/amend this data during annual returns, or if wanting to do this inside the annual return period can contact the BLA on 1300 135 452 (select option 3) or make a request via online form on the BLA

website:

<https://forms.consumer.vic.gov.au/forms/bla>

Aside from removing the ability of members of the public to access sex workers' data held on the 'exempt register' the amendments to the 'Sex Work Act 1994' contained in CLAB 2019 have made no restriction on the ability to access information via FOI processes in Victoria.

In Conclusion

We would note in closing that there is a strong history here in Victoria and around Australia of peer sex worker organising pushing back against oppressive laws and policies that impact our community. This history is based on utilising the knowledge within local sex worker community, often knowledge that spans back over decades, whilst also always recognising the need to consult widely and continually within community so that we represent the diversity of our community and ensure that the most marginalised in community remain heard.

We thank Victorian sex workers who have contacted us regarding this matter and also sex workers throughout Australia who have got in touch to learn more about this issue and to reach out to offer us support.

For anyone still wishing to get in touch you can do so on* vixencollectivemelbourne@gmail.com
Or contact Scarlet Alliance, Australian Sex Workers Association on info@scarletalliance.org.au

*As always, we note that Vixen Collective is a voluntary organisation and ask people to be patient in our response times as we prioritise direct peer support issues and (as you can imagine) we are busier than usual at the moment dealing with this issue (among many others).

FURTHER INFORMATION:

Vixen Collective has frequently called on government, and is on record in doing so, to address a history of barriers to police and access to justice for Victorian sex worker community.

For those interested in learning more about these issues we recommend the reports 'The Role of Victims of Crime in the Criminal Trial Process – Victorian Law Reform Commission, Feb 2016', 'Draft Sex Work Regulations 2016 – Consumer Affairs Victoria, Feb 2016', 'Access to Justice Review – Department of Justice and Regulation, March 2016', all of which can be found here:

<http://vixencollective.net/what-we-do/submissions/>