



'I Wouldn't Call the Cops if I was Being Bashed to Death': Sex Work, Whore Stigma and the Criminal Legal System

Zahra Stardust

Queensland University of Technology, Australia

Carla Treloar

UNSW, Australia

Elena Cama

UNSW, Australia

Jules Kim

Scarlet Alliance, Australian Sex Workers Association, Australia

Abstract

Discourse on sex work is replete with narratives of risk and danger, predominantly focused on violence and disease. However, the risks instigated by police, maintained by the criminal justice system and sanctioned by the state—criminal laws, licensing laws and targeted policing—receive far less attention. This paper responds to this gap in three ways. First, we examine how stigma manifests in sex workers' experiences of Australian policing, which act to disincentivise sex workers from accessing criminal legal mechanisms. Second, we illustrate how sex workers are denied victim status as they are seen by law as 'irresponsible citizens' and blamed for their experiences of crime. Third, we argue that these factors create conditions in which sex workers must constantly assess risks to access safety and legal redress while structural sex work stigma persists unabated. We conclude that 'whore stigma' is entrenched in the criminal legal system and requires a systematic response that necessitates but goes beyond the decriminalisation of sex work.

Keywords

Criminal law: criminalisation; policing; justice; sex work; stigma.

Please cite this article as:

Stardust Z, Treloar C, Cama E and Kim J (2021) 'I wouldn't call the cops if I was being bashed to death': Sex work, whore stigma and the criminal legal system. *International Journal for Crime, Justice and Social Democracy*. 10(3): 142-157. <https://doi.org/10.5204/ijcjsd.1894>

Except where otherwise noted, content in this journal is licensed under a [Creative Commons Attribution 4.0 International Licence](#). As an open access journal, articles are free to use with proper attribution.

ISSN: 2202-8005



Introduction

Sex work is often viewed as a 'crime against convention', one that transgresses social boundaries by virtue of 'deviant' behaviour (White and Perrone 2015: 234). In many jurisdictions, consensual sex for money attracts criminal penalties because it deviates from social (hetero)norms and transgresses cultural conventions that position sex within private space, monogamy and coupledom (Rubin 2011: 152). Even where criminal penalties have been lifted, sex work still attracts stigma. Stigma can be understood as a social process of exclusion that involves multiple components—'labeling, stereotyping, separation, status loss and discrimination'—and is shaped by the exercise of social, economic and political power (Link and Phelan 2001: 363). Research has demonstrated that sex work stigma operates at macro levels (in the form of laws, policies, regulations and media), meso levels (in institutions such as justice and health systems) and micro levels (including external acts of discrimination and internalised stigma among sex workers) (Benoit et al. 2018). 'Whore stigma' can be seen as a driving force behind many policies and regulatory frameworks that govern sex work, including criminalisation, licensing and end-demand policies. These are all 'infused with moralistic presumptions, draw on the rhetoric of risk, and are premised on (virtually identical) stigmatic assumptions' that view sex workers as victims of exploitation, their labour as delegitimate and sex work as risky (Bruckert and Hannem 2013: 61).

Gail Pheterson referred to whore stigma as 'a social and legal branding' reinforced by 'police, judges, doctors, law-makers and researchers' who participate in 'direct or indirect collusion with the persecution of prostitutes' (1990: 397–398). Whore stigma, wrote Carol Queen, 'derives from whores' sexual availability ... *on their own terms*' (1998: 132; emphasis in original). While whore stigma attaches readily to women, because 'a sexually emancipated woman is threatening and despised' (Queen 1998: 132), male and trans sex workers' experiences of whore stigma are often combined with homophobia, cissexism and transphobia, resulting in disproportionate experiences of violence at the hands of both police and clients (Lyons et al. 2017; Minichiello, Scott and Cox 2018; Morrison and Whitehead 2007). Racism further compounds whore stigma for Indigenous sex workers, migrant sex workers and sex workers of colour. For migrant sex workers, stereotypes of 'beautiful dead bodies' in anti-trafficking campaigns (Andrijasevic 2007) have fuelled a criminal justice approach to policing Asian brothels and massage parlours and deporting sex workers under the guise of 'rescue'. Stigma is particularly acute for Aboriginal or Torres Strait Islander sex workers who face targeted police interaction and disproportionate rates of incarceration. Sex workers living with HIV are uniquely and unnecessarily criminalised in some jurisdictions despite recent developments in biomedical technologies (commonly referred to as 'Undetectable = Untransmissible') that mean people living with HIV can have safer sex with zero to negligible risk of transmission (Jeffreys, Matthews and Thomas, 2010). Stigma manifests and compounds differently for street-based sex workers, sex workers who use drugs, sex workers who are parents and young people engaged in sex work—it remains stratified across the industry and is most acute for those with frequent police contact.

Consequently, sex workers occupy what Sibley called 'the liminal space between offender and victim' (2015: 1). Sex workers are expected to survive by 'downloading risk onto their own subjectivities, navigating the sex trade through technologies of risk management' (Sibley 2018: 1462). Where sex work is positioned as inherently risky, and criminalisation is normalised, sex workers become responsible for their own safety through individualised decision-making. Alongside state law enforcement, 'multi agency' responses are designed to encourage sex workers to exit the industry (Scoular and O'Neill 2007). Instead of supporting worker rights, autonomy and safety, these projects incentivise sex workers to exit based on promises that they will escape harm, risk and criminal punishment. In doing so, they obscure the role of the state's ongoing systemic exclusion of sex workers from citizenship (Scoular and O'Neill, 2007). Sex workers who continue to work are considered responsible for their own risks, including the risk of violence (Krüsi et al. 2016: 1137). Meanwhile, states assume increasingly less responsibility for whorephobic laws, policies and enforcement.

International and national research have demonstrated that criminalisation, licensing and policing *create* risk for sex workers. Laws that prohibit sex workers from implementing basic safety strategies—such as working with colleagues or notifying another worker about their booking location—force sex workers to choose between lawful, unsafe work or safer, criminalised work (Jeffreys, O'Brien and Fawkes 2019). Repressive regulation of the sex industry acts as a barrier to sex workers accessing non-judgemental, appropriate health care services (Lazarus et al. 2012) and is associated with increased risk of physical and sexual violence and condom-less sex (Platt et al. 2018). In criminalised regimes, sex workers' ability to seek information, support and health care is 'severely limited by the risk of prosecution' (Harcourt, Egger and Donovan 2005: 123). The New South Wales Wood Royal Commission inquired into 'systemic or entrenched corruption within the New South Wales Police Service' (New South Wales Government 1997: 1) and described 'a clear nexus between police corruption and the operation of brothels' (13). Police corruption and inaction have been documented in literature across the globe. In Hong Kong, sex workers (particularly migrant sex workers) have reported a reluctance to interact with police due to experiences of threats, harassment and abuse (Wong, Holroyd and Bingham, 2011). Sex workers interviewed in the United States reported experiences of verbal harassment, sexual exploitation and extortion by police, in addition to a lack of responsiveness to their 911 calls for emergencies (Sherman et al. 2015). Sex work research recurrently finds punitive policing to produce greater, rather than less, risk.

Research consistently demonstrates barriers for sex workers in accessing justice in jurisdictions where the *purchase* of sex is criminalised (Le Bail and Giometta 2018). Sex workers report poor relationships with police, fear of police and attempts to avoid police, which reduce their capacities to protect themselves. For example, research in Canada found that, as long as clients continue to be targets of law enforcement, police presence pressured sex workers to rush client negotiations and screenings (e.g., for weapons, intoxication or histories of violence) (Krüsi et al. 2014), thereby increasing the risks of violence, abuse, condom refusal and HIV/STI exposure (Landsberg et al. 2017). The criminalisation of clients results in sex workers being less likely to report crimes as they may incriminate themselves (Ellison, Dhónaill and Early 2019). In these contexts, criminal laws and police tactics that purport to be protectionist increase the risks for sex workers.

In this paper, we examine how whore stigma manifests in sex workers' experiences with police in Australia. We identify different risks facing sex workers, including police inaction, identification, entrapment, disbelief and minimisation of experience, which act to disincentivise sex workers from accessing criminal justice mechanisms. Varying laws surrounding sex work—criminalisation, licensing and decriminalisation—allow us to examine sex workers' decision-making and navigation of risk and stigma uniquely. We also explore how sex workers are denied victim status when they experience crime as they are seen by law as 'irresponsible citizens' and blamed for their experiences. We argue that sex workers are simultaneously seen as expendable, disposable, corruptible and untrustworthy—worthy of blame but unworthy of protection. These experiences contribute to an embodied whore knowledge, through which sex workers understand police, the law and the state. Finally, we argue that these factors create conditions in which sex workers must constantly assess and mitigate risks to access safety and legal redress while structural sex work stigma persists unabated.

Methods and Approach

This study was conducted in partnership between Scarlet Alliance, the Australian Sex Workers Association and the Centre for Research in Health at the University of New South Wales (UNSW). It forms part of a broader Stigma Indicators Monitoring Project to develop measurable indicators of stigma among priority populations for bloodborne viruses and sexually transmissible infections. To understand contemporary experiences of sex work stigma, we designed a qualitative study involving focus groups and interviews. Each phase (including research conception, methodological design, data collection, analysis and writing) was conducted in partnership, involving Centre for Social Research in Health Staff, Scarlet Alliance staff and a sex worker researcher at UNSW. Our questions and topics were guided by a consultation workshop

at the 2016 Scarlet Alliance National Forum in Adelaide, which involved more than 100 sex workers from around Australia.

Scarlet Alliance advertised this study through its membership of sex workers, state- and territory-led peer sex worker organisations and online networks of sex workers. Potential participants registered interest with their local sex worker organisation. Each focus group was co-moderated by a sex worker in partnership with a non-sex worker researcher. One of the sex worker moderators was also an academic researcher. Focus groups were conducted with sex workers in the same jurisdiction in 2017. Four focus groups were conducted by telephone. Two face-to-face groups (a migrant and a non-migrant group) were held in Sydney. Two participants were unavailable at the time of the focus groups and were interviewed individually. Each participant was provided with AUD 50 for their time and expertise. Approval was received from the Human Research Ethics Committee of UNSW (HC16880).

We conducted six focus groups with 29 sex workers from each state and territory in addition to two interviews with individual sex workers (total $n = 31$). The majority ($n = 21$) identified as women, and 19 were assigned female at birth. A range of ages, genders and sexual identities were represented in the sample (see Table 1). One participant identified as Aboriginal or Torres Strait Islander. Most participants were born in Australia ($n = 15$), with nine born in South East and East Asia. Participants had performed a range of sex work in all states and territories; the most common type of work was private escort or in-call ($n = 19$ each). Most participants spoke English at work ($n = 28$). Audio recordings of focus groups and interviews were transcribed by a transcriber working under a confidentiality agreement. Transcripts were de-identified and checked for accuracy, and audio recordings were deleted. No demographic data were assigned to individuals (e.g., age, gender or location) to prevent identification.

All authors developed a coding scheme for the overall data and applied it with checks for consistency and clarity of concepts. The descriptive codes were developed in reference to focus group topic areas: disclosure, family and relationships, health care, social service, finances, employment, police, legal and justice issues, intersecting factors, media and ending stigma. They were supplemented with conceptual codes: resilience and self-care, emotional labour, citizenship, accountability for stigma, social capital, human rights impacts, internalised stigma, respectability politics, visibility and mental health. For this article, one author undertook an analysis of data coded under 'police', 'citizenship' and 'legal and justice issues'. Preliminary analyses were discussed with co-authors to elaborate and extend the interpretation of the data in relation to existing sex work literature on stigma, policing and risk.

Our study intended to gather perspectives on hypothetical experiences of crime, and moderators informed focus group participants that they should not disclose actual experiences of crime. Despite this, some participants did disclose actual experiences of crime and the criminal legal system. All participants were provided with contact details for their local state or territory sex worker organisation for support and referral pathways and Lifeline for crisis support. The decision to refer participants to sex worker organisations was made because sex workers generally report variable quality of support from general services (e.g., those for sexual assault, family violence or mental health), and local organisations could refer participants to sex worker-friendly services. Researchers also had access to confidential counselling via the UNSW Employee Assistance Program and engaged in debriefs with one another after each session.

Table 1: Participant demographic characteristics

N=31	N
Age	
18-29	7
30-39	9
40-49	10
50 and over	5
Gender*	
Female	21
Male	5
Non-Binary	7
Sex assigned at birth**	
Female	19
Male	11
Sexual identity*	
Heterosexual	7
Lesbian or Gay	7
Bisexual	4
Queer	14
Region of birth	
Australia	15
Oceania (New Zealand, Melanesia, Micronesia, Polynesia)	3
Asia	10
Europe	1
Americas	1
Africa	1
Type of sex work*	
Private (escort)	19
Private (in call)	19
Escort (agency)	3
Brothel (full service)	15
Street-based	2
Massage parlour	7
BDSM house	2
Different	4
States participant works in*	
ACT	2
NSW	23
NT	2
QLD	7
SA	5
TAS	1
VIC	10
WA	6
Languages spoken at work*	
English	28
Thai	4
Mandarin	1
Cantonese	2
Other	2

* Items were not mutually exclusive

** one participant did not respond to this question

'They Don't Care About Us'

Sex workers in Australia have criticised the police's dual and compromised role as both their prosecutors and (alleged) protectors. Our participants shared their experiences of and attitudes towards contacting the police as actual and potential victims of crime. Some participants who had contacted police in the past described varying degrees of dissatisfaction, disappointment and frustration with only a few positive outcomes. Other participants reported that they would be highly reluctant to seek police assistance unless it was a last resort due to their own prior experiences and hearing the experiences of their peers. Some vowed that nothing would convince them to contact the police, no matter how dire the circumstances. Calling the police was seen to bring risks of identification and investigation (particularly for those working unlawfully, including those who were unregistered or unlicensed), which could lead to entrapment, harassment, assault, arrest or attempts at bribery. To some participants, it seemed pointless to report a crime to the police due to the likelihood of police inaction.

Sex Workers as Unworthy: Risk of Inaction

Participants pointed to a well-documented history and ongoing culture of police brutality towards marginalised groups such as queers, sex workers, drug users and homeless people. As Dwyer and Tomsen wrote, 'in the 70s across Australia, gay men, lesbians, transsexuals, and sex workers were essentially part of a sexual underclass that was close in status to the homeless, Indigenous people, and alternative groups' (2016: 36). Sex workers are still excluded from the benefits of citizenship, primarily because they do not live up to the "acceptable" modes of being a sexual citizen... privatised, deradicalised, de-eroticised and confined in all sense of the word: kept in place, policed, limited' (Bell and Binnie 2000: 5). In focus groups, sex workers reported that they anticipated proactive police action in charging, arresting or reporting them. However, they expected police inaction in addressing their experiences of crime:

When I've experienced sexual assault in the past, the cops have done nothing. When I've been robbed, when I've been bashed, the cops have done nothing. They have proven time after time after time that they don't care about queers, they don't care about whores, they don't care about homeless people, they don't care about junkies. So unless you're rich, they don't give a flying fuck and I just don't have the time to deal with their bullshit, I don't have the energy to deal with their crap ... The cops aren't our friends and they will always fuck us up (Focus Group 3).

This repeated exclusion and expectation of inaction meant that, while participants generally reported that they were more likely to seek police assistance for a serious crime, some reported that they would not seek police assistance in any event, no matter how grave:

I wouldn't call the cops if I was being bashed to death. The pigs can go fucking burn (Focus Group 3).

It would have to be very, very severe for me to look at seeking assistance in the future (Focus Group 2).

Various police forces have now created sex worker liaison officers and gay and lesbian liaison officers as a conduit between community and police. However, Russell has highlighted that, although these officers are promoted as allies, these protective aspirations are actually conditional on people being 'good queer citizens' or worthy recipients of state recognition and protection (2019: 8). Citizenship involves a provisional granting of rights only where a person assumes certain responsibilities; therefore, sex workers who do not or cannot conform are seen as irresponsible non-citizens, thereby excluded from belonging, participation and eligibility to access the state's protective mechanisms.

Sex Workers as Expendable: Risk of Identification

In jurisdictions where sex work remains criminalised, sex workers feared drawing police attention and being identified and arrested for sex work-related offences if they were to report a crime. However, even where various aspects of sex work have been decriminalised, social and cultural stigmas continue to present obstacles to reporting. For example, in New South Wales, where 1995 reforms bestowed legal status upon brothels, brothels continue to be 'perceived as outlaws' and 'regarded as inherently awful, disorderly, and hence warranting and requiring exclusion from the community' (Crofts 2010: 151). Stigma—expressed, perceived and anticipated—follows sex workers, even where criminal laws have been repealed. Law reform provides only a partial solution to what our participants identified as a criminalisation 'hangover':

If you've worked under full criminalisation, when I worked under full criminalisation, no matter ... anything that happened, if your car ran into another car, you would offer cash as quickly as possible or dissuaded any police involvement because you didn't want to come to the attention of the police in anyway whatsoever (Focus Group 5).

Participants reported that their interactions with police shifted dramatically if they disclosed their sex work. For example, one interviewee reported calling the police after having her home burgled and being questioned about why she had two mobile phones; after disclosing that she was a sex worker, she perceived a change in the investigating officers' attitudes. Another said:

I had to engage with the police in reporting [of a sexual assault] ... as part of reporting it, it became clear to the police that I was a sex worker ... and a lot of things were said to me during that time that were completely unacceptable and I noticed it was just like everything is going along and you're being treated with respect and then just you know, click your fingers and all of a sudden, everything is very different ... I was really just treated with no dignity, with no humility, with no respect (Focus Group 3).

The risks associated with police interaction were particularly apparent in the migrant sex worker focus group because police identification could prompt immigration investigation into one's visa status. One participant discussed how she avoided disclosing her sex work to the police when reporting a robbery:

I lost all my wallet, also he took my identity and passport and everything so I need to get it to go back to my hometown. Then I need to report it to the police, but if I say I'm here just sex worker and then I think it's not appropriate to just go and say 'a guy come and rob me at my place because I'm a sex worker' so I just tell them that I get robbery on the street at night when I was walking. Something a bit I ashamed about me, to say some lie but you know what can I do? (Focus Group 1).

There are few safe, legal migration pathways to sex work in Australia, and those who migrate for sex work face increased immigration scrutiny at the border (Pickering and Ham, 2014; Renshaw, Kim, Fawkes and Jeffreys 2015). Government anti-trafficking initiatives have meant increased immigration raids, particularly upon Asian massage parlours, and harassment of Asian sex workers (Pearson 2007: 52). One migrant sex worker recalled an occasion where a client had assaulted her friend in the workplace; when she contacted the police, they minimised the clients' behaviour and threatened to report the sex worker to immigration:

[The police] said [the client's behaviour] was okay because [my friend had] done wrong giving wrong information to the client. 'That is not your real age and not your real name and not your real nationality'. But for us as a sex worker, we never give anything real, for the name or the

age or nationality. It's just for our confidentiality, we don't want anyone to know who we are, this is simple. And the police said, 'well it's kind of like you deserve that, because you didn't give the correct information, so that's why the client is angry to you' ... [The police] ask her, 'what is your visa you are holding?' and she said 'I am a student' and he said, 'if you are student, why are you still working here, why are you still in here? If you don't leave now I'm going to contact immigration and I'm going to get you caught' just like that, so she was so frightened and she said she leave everything and just go (Focus Group 4).

These experiences highlight the precarious position of migrant sex workers in Australia. For sex workers on temporary visas, the incentive to report a crime was low due to the immediate assumption by police that the migrant sex worker was at fault rather than the local perpetrator, as well as the likelihood that police may tip off immigration authorities, resulting in potential detention or deportation.

Sex Workers as Corruptible: Risk of Entrapment

Police corruption in regulating the sex industry has been extensively documented by the Wood Royal Commission in New South Wales, the Fitzgerald Inquiry in Queensland and the Neave Inquiry in Victoria. Corruption is enabled by criminal and licensing laws, as well as discriminatory local council policies that regulate home-based sex services premises and massage parlours. In the migrant sex worker focus group, participants reported incidents where police arrived at their workplace with an unspoken expectation that they would receive free services in return for not reporting the sex workers because they were working in a jurisdiction where sex work was criminalised:

The police came, because the police knows, they see the ad in [a free classified ads website] and know they have a new girl come. And the police come to see me and didn't do anything ... and then my boss leave the police in the room and [I] gave him a free hand job ... Yeah and the police say, 'I will not tell on you' (Focus Group 1).

Police continue to engage in entrapment operations by posing as clients to entice sex workers into breaking the law, particularly in jurisdictions such as Victoria (where special police operations target street-based sex workers) and Queensland (where police request unprotected services or doubles bookings). Since 2012, police in Queensland have enjoyed express immunity from prosecution for entrapping sex workers:

I was also working privately in Queensland ... I was aware of police doing this thing where they call up your number and they try to get you to agree to an uncovered blow job over the phone, because they are trying to get prosecution for any kind of unprotected sex, well it's illegal here basically ... I did have a situation where an undercover police officer came in pretending to be a client and asked all of the questions almost like they had a list of all the illegal things and it was incredibly unnerving and very distressing. And you feel like your whole world has been kind of, you know, invaded by, non-consensually, you know... Yeah it was really horrible and then he did the whole, 'I've left my wallet in the car, I'll be back in a minute' and left and never came back (Focus Group 4).

Sex Workers as Untrustworthy: Risk of Disbelief

Processes of sex workers being 'responsibilised for sex work related violence' (Krüsi et al. 2016: 1137) are particularly evident when sex workers report sexual assault. Problematic legal, cultural and social narratives that sex workers are in a perpetual state of consent (and thus unable to be sexually assaulted) affect the perceived 'rapeability' of sex workers. Interviews with street-based sex workers have indicated that the public often sees them as 'unrapeable' or deserving of sexual assault (Miller and Schwartz, 1995). More recently, a study in the United States of undergraduate students indicated that participants responded to news about a sex worker who had been raped with less empathy and more victim-blaming attitudes than a non-sex worker (Sprinkle et al. 2018). In these circumstances, sex workers' mistrust and

avoidance of the legal system can be seen as rational and deliberate acts of self-care. For those who had experienced crimes that attract additional stigma or disbelief, such as domestic violence, participants reported a sense of having nowhere to turn:

The problem with domestic violence of sex workers that you have, from my experience, when you got it, when you speak out, no one really believes you and that's a problem ... they look at you and they think you are still alive, that you haven't been through any sexual abuse or whatever it is, so they don't believe what you say (Focus Group 3).

The last serious sexual assault that I was subject to, I didn't contact the police because I didn't want to be subject to more trauma and I think that really sums up how I feel about the police having been a sex worker for more than 20 years (Focus Group 2).

In combination with everything that I know about police in general and the situation in Victoria from being part of the sex worker community ... I would never do that ... I would support someone else if they wanted to make a complaint to police ... but I would be extremely reluctant to in anyway encourage that (Focus Group 2).

Like other victims of sexual assault, sex workers were reluctant to report such crimes to police, anticipating that they would not be taken seriously. This data echoes the well-documented experiences of sexual assault victims who report their experiences within the criminal legal system as a 'second rape' (Scheppelle 1992). Disclosing both sex work and sexual violence (at work or outside work) to the police becomes risky for sex workers due to the potential that their sex work will be used to excuse harmful experiences:

I don't think women fare very well in those situations full stop. I don't think we have an enlightened criminal justice system when it comes to these issues. I don't even think I would expect to fare well as a non-worker who had a rosy back history ... I don't even think about my past negatively [but] in that thing I go, 'am I up for that?' (Focus Group 5).

Sex Workers as Disposable: Risks of Reporting

Sex worker decisions to report crime among our participants were influenced by judicial commentary, court outcomes and media reporting of cases involving sex worker victim-survivors. Sex workers anticipated myths and stereotypes about the perceived rapeability of sex workers in judicial decision-making. Feminist legal scholars have examined Australian court decisions that have considered the relevance of a victim's sex work, including judicial commentary that sexual assault 'when committed against prostitutes ... is not as heinous as when committed, say, on a happy married woman' (*Attorney General v Harris* [1981] VCCA, 11 August 1981, cited in Graycar and Morgan 2002: 346–348). Despite advocacy from both sex worker and women's legal organisations, as well as the Victorian Law Reform Commission, it was not until 2016 that the Victorian Sentencing Manual (Judicial College of Victoria) was updated so that judges could no longer take into account 'prostitution, and the conduct of the victim prior to the offence' in sentencing sexual offenders.

Participants raised the overdue nature of these legislative reforms in focus groups. They highlighted that it was not simply about legislative reform but the criminal legal system more broadly. Whore stigma also manifests in police treatment, prosecutorial discretion, judicial bias and the adversarial process itself:

Well it is the entire system, and let's be honest, for 36 years here in Victoria it was a guideline for judges that they could give people reduced sentences if they raped one of us on the basis that we weren't chaste women (Focus Group 2).

Victoria recently was probably the most exciting thing I've seen in a long time, just got those laws that said that 'your occupation can't be considered in sentencing', which was pretty exciting. Like I remember the [high profile murder] case of [non-sex worker] Jill Meagher and the prior six victims had been [sex] workers and the sentences had been really light and then the husband came out and said, 'if those women hadn't been sex workers, I believe my wife would still be alive' and to me, that felt like a really fundamental change. He recognised that when we treat one group of women as second class, it affects all women (Focus Group 5).

For many, reporting a crime seemed pointless because popular media representations of sex work as undesirable and sex workers as disposable victims (whereby sex workers are portrayed as dead bodies, rather than holistic characters) (Hay 2017) are so heavily entrenched in the cultural imagination. The *Courier Mail* reporting of the horrific murder and dismembering of transgender sex worker Mayang Prasetyo was ruled 'offensive' and 'gratuitous' by the Australian Press Council (Ball 2016: 2). The murders of Jill Meagher (a non-sex worker) and Tracey Connelly (a sex worker) were treated differentially by media, with Connelly dehumanised and referred to repeatedly as a 'prostitute' in news headlines (Gilmore 2019; Rosewarne 2013). Our participants experienced media reporting and judicial decisions as evidence that sex workers' lives are less valuable, that sex workers do not receive equal treatment under the law and that the law does not deliver justice:

You just have to look at cases that have involved sex workers that show that, you know, sex workers don't get good justice, like the cases like the American Navy guy that raped a sex worker and, you know, wasn't convicted and there are cases down in Melbourne of that guy who was sexually assaulting sex workers for years and police never did anything about it. Yeah, like we are constantly reminded that we're not valuable or not seen as valuable members of society and we're not worth police protection or justice (Focus Group 6).

Media reporting on sex work is one site where sex workers learn about how the criminal legal system has handled cases. These representations (particularly how sex workers are compared to other victims) affect sex workers' decisions to report. In addition to the death of Tracey Connelly, one participant refers to the 2009 case of United States sailor Petty Officer Timothy Davis. He was found not guilty by the New South Wales District Court of having sexual intercourse without consent and aggravated by bodily harm, despite admitting to using a 'lock-down manoeuvre' to restrain the worker after he did not orgasm within his half-hour time slot (Scheikowski 2009). Another participant also referenced this case:

Here we had the case of the American sailor who assaulted a sex worker and assaulted her really badly. He basically half strangled her to death and yet he got off with probation and that was because you know, he was an American sailor here on leave and you know, nobody wanted to upset the Americans and she was just a whore (Focus Group 5).

Participants in the focus groups had cases such as this in their minds when deciding whether to report a crime to the police.

Sex Workers as Responsible: Risks of Prosecution

Despite sex workers' core involvement and advocacy in the Slutwalk and #MeToo movements demanding accountability and justice (Chateauvert 2014), sex workers still anticipate stigma in the legal system, particularly in jurisdictions that retain criminal and licensing regimes:

In this kind of model of legislation [licensing in Queensland] from between any one day, in any one day activities I'm doing at work are illegal and others are legal ... you are crossing that line backwards and forwards all the time, so it is the fact that it's more difficult to access redress about stuff if you are doing something that is illegal, because you would be making yourself known to be doing that activity, so in moving forward with anything, you are always considering whether it's worth the risk ... (Focus Group 4).

Some recent case law has suggested shifts in the treatment of sex work by courts. In a 2015 Supreme Court case in the ACT, *R v Livas* [2015] ACTSC 50, a man plead guilty to sexual assault induced by fraud and was sentenced to eight months imprisonment with a two-year good behaviour bond after he pretended to pay a sex worker with an envelope stuffed with paper. Some participants referred to this case as an example of progressive shifts in the law, although they qualified that 'it's taken us a long time to get there and it's only in one jurisdiction' (Focus Group 5). Additionally, one participant reported experiencing similar circumstances and still feeling too afraid to access police:

I was given fake money by a client once when I was working in [interstate] and [that state's] regulations are quite strict and they have a lot of conditions and even though I was working under the conditions, so I could have potentially called the police on this person, it was a choice. I went through the checklist in my head of what could go wrong if I did call the police and I had a pretty good case. This guy had committed a crime which was you know handing me fake money and still it was too frightening (Focus Group 5).

Some participants expressly noted the difficulty in meeting the evidentiary burdens to prosecute sexual assault cases successfully:

Even if you're not a sex worker and you've just experienced sexual assault in your personal life, those cases are very difficult to go through and those processes are very traumatic and getting a conviction is extremely hard and then you look at media reports of police and sex work and it's like it's even worse and it's like ... why would you do it? (Focus Group 6).

One participant described this deliberation process over whether to access police assistance as 'sort of cost benefit analysis' (Focus Group 6). Another described it as 'very mentally draining' and something that 'at the end of the day it doesn't feel worthwhile' (Focus Group 6). Others spoke to the educational and emotional labour potentially required in convincing police or courts that sex workers could be victims of sexual assault at all:

I would not have the strength to sit there and have to justify the fact that there is a difference between consensual sex work and sexual assault and despite the fact that I received money, I did not consent to certain acts or give certain practices or to anything and therefore it was sexual assault (Focus Group 6).

Three states in Australia (Victoria, Queensland and New South Wales) are now reviewing their sexual consent laws to better reflect the experiences of sexual assault survivors. Some states have moved towards a communicative consent model and updated jury directions to require jurists to examine their assumptions about who can be sexually assaulted. Sex worker organisations have argued that consent should be vitiated where sex worker clients have provided falsified proof of payment or deliberately reversed their payments following their booking, in addition to occasions where police and council investigators misrepresent themselves by posing as clients (Scarlet Alliance and Vixen Collective 2020).

Sex Workers as Educators: Risks of Engaging

On the few occasions that participants reported positive experiences with police, these were isolated to instances where the relevant state police force included trained sex worker liaison officers or had units that worked closely alongside sex worker organisations. Positive experiences or attitudes towards police were only reported in New South Wales (where sex work is decriminalised) or in states such as the Australian Capital Territory and Victoria, where sex worker organisations conduct sex worker sensitivity training:

I've had different responses. I was [a victim of a crime] a few years ago and I had to work my way through [numerous] sets of CID [criminal investigation departments] before I got to one that would actually take on the case and treat me like any regular citizen and they were fantastic, but having to go through the others first to get to them, because nobody wanted to deal with it, they had very much the attitude of 'what do you expect doing the job that you're doing?' (Focus Group 2).

Some participants suggested that sex worker sensitivity training with police had been effective in eliciting more effective responses. One New South Wales-based sex worker described how this made her feel more comfortable in accessing police services:

One of the things that sex worker organisations have done is working with young trainees with police coming into the force ... and let them know who we are and how to treat us better and get rid of your pre-conceived ideas about who we might be ... [If I went to the police] I would go through the liaison officer, the industry liaison officer ... to smooth the way a bit (Interview 2).

In these instances, sex workers were selective about the particular geographical Police Area Command, station or officer, based on peer vouching systems and perceptions of progress in these areas. However, there was always a disclaimer that 'if you instigate dealings with the police, you really don't know what you're getting':

You pick and choose. [Inner city areas] Gay and Lesbian Liaison Officers, like if you are going to go, those are the ones that I would prioritise, but still you don't know what you are going to get, but they might have seen a sex worker before (Focus Group 4).

Participants noted various protective factors in dealing with police, including whiteness, class, heterosexuality, and being cisgender, employed outside the sex industry, English-speaking and working in a decriminalised jurisdiction. These factors improved people's access to and experiences with and treatment by police because there was less risk of being identified, fined or arrested. The small number of positive attitudes towards and experiences of police were described by participants who identified as cisgender women. No participants from the migrant sex worker focus group, nor any transgender or gender diverse participants, reported positive experiences with or attitudes towards the police. For sex workers with multiple stigmatised identities, police engagement remained a severe risk.

When we asked participants what it would take to end sex work stigma, the responses overwhelmingly emphasised the need to take an intersectional approach to eliminate compounding oppressions that shaped sex worker experiences with police and the state. For example, many participants spoke to the need to end racism, homophobia, transphobia, misogyny and drug criminalisation in the criminal legal system, as well as to abolish institutions of policing altogether: 'decolonisation, end capitalism, dismantle patriarchy. And also disestablish the police obviously' (Focus Group 2).

Conclusion: Risk, Safety and Opting Out of the System

Our study provides qualitative data about the factors influencing sex worker decision-making about engagement with the criminal legal system, including how perceived and anticipated stigma can be a driver in sex workers' decisions to (dis)engage with the system. Sex workers consistently indicated a reluctance to seek police assistance or to pursue cases using criminal legal mechanisms, reporting a lack of trust in police, lack of faith in the system and little to no perceived likelihood of a just outcome in court. Consequently, many took steps to avoid re-traumatisation, stigmatisation and discrimination by opting out of the system itself. This should be unsurprising, given that sex workers are expected to assume responsibility for their participation in an occupation that is positioned as inherently risky. Platt et al.'s research identified that sex workers confront 'diverse forms of police violence and abuses of power' (2018:

1). The kinds of police interactions discussed above worsen the labour conditions for sex workers, increase the risks and place greater responsibility upon sex workers to fend for themselves. Sex workers navigate this system selectively and vigilantly to protect themselves from the police, immigration and criminalisation, while little responsibility rests upon the state.

We can attribute this reluctance to engage to several factors. First, the complex web of criminal and licensing laws that continue to regulate sex work in most states and territories poses a significant disincentive to sex workers having any interaction with the state for fear of identification, incrimination and arrest. Second, legacies of trauma from police corruption and brutality towards sexual minorities mean that sex workers identify police as prosecutors and perpetrators rather than protectors and hold deep distrust in the institution itself. Third, sex workers' decisions to pursue redress in cases of violence are influenced by news reporting about sex worker victims of crime, where sex workers continue to be treated as either less worthy victims, less rapeable or a media spectacle. Fourth, such concerns are often affirmed for sex workers when they turn to court decisions and judicial commentary as evidence of the law's inability to keep pace with community standards and to highlight the lack of justice for sex workers. Fifth, these external factors are repeatedly validated by an embodied whore knowledge comprised of sex workers' individual, direct experiences with the system. The few occasions where sex workers reported positive experiences with police were isolated to individual officers or particular stations with a history of liaison and training with sex worker organisations; however, even these came with cautionary caveats. Our participants' experiences confirm that 'regimes of stigmatisation and criminalisation [continue] to undermine sex workers citizenship rights to police protection and legal recourse' (Krüsi et al. 2016: 1137). Whore stigma remains entrenched in multiple layers of the criminal legal system.

Criminalisation and licensing of sex work are both drivers and symptoms of whore stigma. They are drivers in the sense that the presence of criminal and licensing laws facilitate (and provide justification for) increased police contact. Additionally, they are symptoms in the sense that legal systems governing sex work have developed through stigmatised narratives of disgust, protection and risk. However, stigma bleeds out beyond blackletter law. Although decriminalisation is an essential and necessary first step, simply repealing criminal and licensing laws will not destigmatise sex work. Decriminalisation remains a liminal state of affairs, always at risk and threatened by the hangovers of previous regimes. Even where sex work has been decriminalised, further legal, cultural and systemic change is necessary to ensure that sex workers can access rights and justice.

Our data emphasises the importance of understanding stigma as a structural regime that organises how sex work is positioned, regulated and responded to. Stigma is often uncritically portrayed as an aberration rather than a system, isolated to interactions between people and manifesting as individual prejudice (Stangl, Earnshaw and Logie 2019). By positioning stigma as an individual problem, we arrive at the fallacy that individual training or education alone will reduce stigma and facilitate attitudinal change. Our data do indicate that such interventions are valuable—educative training by peer sex worker organisations with police, judiciary and lawyers to reduce unconscious bias would certainly improve some sex workers' interactions with criminal legal system actors. Our data also demonstrates the need for further research about how staff in the criminal legal system express stigma. Similarly, increased funding of sex work-specific free legal services would assist in mobilising sex workers to claim their legal rights. Greater resourcing of sex worker organisations to implement training and develop stigma reduction interventions, the development of appropriate referral pathways, and peer workers' involvement could improve some sex worker experiences in navigating avenues to justice.

However, training with police, judiciary or lawyers will not 'fix' stigma because stigma is not simply a result of naivety or a lack of empathy. Stigma exists where power is exercised (Link and Phelan 2001). Stigma (and its role in maintaining social hierarchies) is pivotal to the over-policing of Aboriginal and Torres Strait Islander, trans, street-based, drug-using, HIV-positive and migrant sex workers. It is also central to the criminalisation of drug use, rough sleeping, solicitation and loitering. Resisting criminalisation is often complex, messy and unpredictable, meaning that 'simplistic approaches to changes are not always

possible, and may in fact make matters worse' (Seear, Fraser and Boyd 2020: n.p.). Recent law reform efforts to introduce anti-discrimination and anti-vilification protections for sex workers and to expunge sex workers' historical convictions and destroy registration records may go some way towards alleviating stigma that influences criminal legal system actors. Safe pathways to migration, human rights approaches to labour exploitation and transformative justice approaches to harm may facilitate broader system change. While it may have important individual or cultural impacts, sensitivity training does not address the rapid expansion of police powers or their lack of independent oversight, nor the persistent reach of criminal and licensing laws that enable and facilitate whore stigma. Stigma reduction approaches must address the ways in which stigma is entrenched in the systems themselves—into the criminal law, the criminal process, police powers and laws regulating sex work. In this sense, ending sex work stigma requires not only decriminalisation but further repeal of police powers, defunding of police as an institution, non-carceral solutions and justice reinvestment into communities. With the recent decriminalisation of sex work in the Northern Territory and the current review of sex work regulation in Victoria, alongside robust campaigns for decriminalisation in Queensland and South Australia, sex workers are demanding more than simply the removal of criminal laws. Sex workers are asking for an end to structural violence and the building of systems that facilitate sex workers' access to rights, freedoms and justice.

Correspondence: Zahra Stardust, Postdoctoral Research Fellow, Australian Research Council Centre of Excellence for Automated Decision-Making and Society, Queensland University of Technology, Australia zahra.stardust@qut.edu.au.

References

- Andrijasevic R (2007) Beautiful dead bodies: Gender, migration and representation in anti-trafficking campaigns. *Feminist Review* 86(1): 24–44. <https://doi.org/10.1057/palgrave.fr.9400355>
- Ball M (2016) *Criminology and queer theory: Dangerous bedfellows?* London: Springer.
- Bell D and Binnie J (2000) *The sexual citizen: Queer politics and beyond*. Massachusetts: Polity Press.
- Bruckert C and Hannem S (2013) Rethinking the prostitution debates: Transcending structural stigma in systemic responses to sex work. *Canadian Journal of Law & Society/La Revue Canadienne Droit et Société* 28(1): 43–63. <https://doi.org/10.1017/cls.2012.2>
- Benoit C, Jansson SM, Smith M and Flagg J (2018) Prostitution stigma and its effect on the working conditions, personal lives, and health of sex workers. *Journal of Sex Research* 55(4–5): 457–471. <https://doi.org/10.1080/00224499.2017.1393652>
- Chateauvert M (2014) *Sex workers unite: A history of the movement from Stonewall to SlutWalk*. Massachusetts: Beacon Press.
- Crofts P (2010) Brothels: Outlaws or Citizens? *International Journal of Law in Context* 6(2): 151–166. <https://doi.org/10.1017/S1744552310000054>
- Dwyer A and Tomsen S (2016) The past is the past? The impossibility of erasure of historical LGBTIQ policing. In Ball M, Crofts T and Dwyer A (eds) *Queering Criminology*: 36–53. London: Palgrave Macmillan.
- Gilmore J (2019) Rape is not 'sex' and 'broken hearts' don't cause murder. Women are dying – and language matters. *The Guardian*, 1 September. <https://www.theguardian.com/books/2019/aug/31/is-not-sex-and-broken-hearts-dont-cause-women-are-dying-and-language-matters>
- Graycar R and Morgan J (2002) *The hidden gender of law*. Sydney: Federation Press.
- Ellison G, Dhónaill CN and Early E (2019) *A review of the criminalisation of paying for sexual services in Northern Ireland*. Belfast: Queens University and Department of Justice.
- Harcourt C, Egger S and Donovan B (2005) Sex work and the law. *Sexual Health* 2(3): 121–128. <https://doi.org/10.1071/SH04042>
- Hay LV (2017) *Writing diverse characters for fiction, TV or film: An essential guide for authors and script writers*. Oldcastle Books.
- Jeffreys E, Matthews K and Thomas A (2010) HIV criminalisation and sex work in Australia. *Reproductive Health Matters* 18(35): 129–136. [https://doi.org/10.1016/s0968-8080\(10\)35496-6](https://doi.org/10.1016/s0968-8080(10)35496-6)

- Jeffreys E, O'Brien E and Fawkes J (2019) The case for decriminalisation: Sex work and the law in Queensland. *Crime and Justice Briefing Paper, Issue No. 1*. Brisbane: Queensland University of Technology. <https://eprints.qut.edu.au/131101/1/Briefing%20Paper%20sex%20work.pdf>
- Krüsi A, Kerr T, Taylor C, Rhodes T and Shannon K (2016) 'They won't change it back in their heads that we're trash': The intersection of sex work-related stigma and evolving policing strategies. *Sociology of Health & Illness* 38(7): 1137–1150. <https://doi.org/10.1111/1467-9566.12436>
- Krüsi A, Pacey K, Bird L, Taylor C, Chettiar J, Allan S, Bennett D, Montaner JS, Kerr T, Shannon K (2014) Criminalisation of clients: Reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study. *British Medical Journal Open* 4(6). <https://doi.org/10.14288/1.0315338>
- Lazarus L, Deering KN, Nabess R, Gibson K, Tyndall MW and Shannon K (2012) Occupational stigma as a primary barrier to health care for street-based sex workers in Canada. *Culture, Health & Sexuality* 14(2): 139–150. <https://doi.org/10.1080/13691058.2011.628411>
- Landsberg A, Shannon K, Krüsi A, DeBeck K, Milloy M, Nosova E, Kerr T, Hayashi K (2017) Criminalizing sex work clients and rushed negotiations among sex workers who use drugs in a Canadian setting. *Journal of Urban Health* 94(4): 563–571. <https://doi.org/10.1007/s11524-017-0155-0>
- Le Bail H and Giometta C (2018) What do sex workers think about the French prostitution act: A study on the impact of the law from 13th April 2016 against the 'Prostitution System' in France: Synthesis." <http://www.medecinsdumonde.org/sites/default/files/ENGLISH-Synth%C3%A8se-Rapport-prostitution-BD.PDF>
- Link BG and Phelan JC (2001) Conceptualizing stigma. *Annual Review of Sociology* 27(1): 363–385. <https://doi.org/10.1146/annurev.soc.27.1.363>
- Lyons T, Krüsi A, Pierre L, Kerr T, Small W and Shannon K (2017) Negotiating violence in the context of transphobia and criminalization: The experiences of trans sex workers in Vancouver, Canada. *Qualitative Health Research* 27(2): 182–190. <https://doi.org/10.1177%2F1049732315613311>
- Miller J and Schwartz MD (1995) Rape myths and violence against street prostitutes. *Deviant Behavior* 16(1): 1–23. <https://doi.org/10.1080/01639625.1995.9967984>
- Minichiello V, Scott J and Cox C (2018) Commentary: Reversing the agenda of sex work stigmatization and criminalization: Signs of a progressive society. *Sexualities* 21(5–6): 730–735. <https://doi.org/10.1177%2F1363460716684510>
- Morrison TG and Whitehead BW (2007) Nobody's ever going to make a fag pretty woman: Stigma awareness and the putative effects of stigma among a sample of Canadian male sex workers. *Journal of Homosexuality* 53(1–2): 201–217. https://doi.org/10.1300/J082v53n01_09
- New South Wales Government (1997) Royal Commission into the NSW Police Service: Final Report – Corruption. <https://trove.nla.gov.au/work/20238051>
- Pearson E (2007) Australia, in *Collateral damage: The impact of anti-trafficking measures on human rights around the world*. Bangkok: Global Alliance Against Traffic in Women.
- Pheterson G (1990) The category 'prostitute' in scientific inquiry. *Journal of Sex Research*. 27(3): 397–407. <https://doi.org/10.1080/00224499009551568>
- Pickering S and Ham J (2014) Hot pants at the border: Sorting sex work from trafficking. *British Journal of Criminology*, 54(1): 2–19. <https://doi.org/10.1093/bjc/azt060>
- Platt L, Grenfell P, Meiksin R, Elmes J, Sherman SG, Sanders T, Mwangi P and Crago A-L (2018) Associations between sex work laws and sex workers' health: A systematic review and meta-analysis of quantitative and qualitative studies. *PLoS Medicine* 15(12): e1002680. <https://doi.org/10.1371/journal.pmed.1002680>
- Queen C (1998) Sex radical politics, sex-positive feminist thought, and whore stigma. Jill Nagle (ed) *Whores and Other Feminists*. New York: Routledge. 125 - 135.
- Renshaw L, Kim J, Fawkes J and Jeffreys E (2015) Migrant sex workers in Australia. *Research and Public Policy Series No. 131*. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/rpp/rpp131>
- Rosewarne L (2013). One woman's worth: Society's double standard. *The Drum*, 30 July. <https://www.abc.net.au/news/2013-07-30/rosewarne-one-womans-worth/4852056>
- Rubin G (2011) *Deviations: A Gayle Rubin Reader*. Durham and London: Duke University Press.
- Russell EK (2019) *Queer histories and the politics of policing*. Oxford and New York: Routledge.
- Scarlet Alliance and Vixen Collective (2020) Submission to the Victorian Law Reform Commission for the Inquiry into Improving the Response of the Justice System to Sexual Offences. 23 December.
- Scouler J and O'Neill M (2007) Regulating prostitution: Social inclusion, responsibilization and the politics of prostitution reform. *The British Journal of Criminology* 47(5): 764–778. <https://doi.org/10.1093/bjc/azm014>
- Scheikowski M (2009) US sailor not guilty of rape in Sydney. *Sydney Morning Herald*, 23 November.

- Schepppele KL (1992) 'Just the facts, ma'am': Sexualised violence, evidentiary habits, and the revision of truth. *New York School Law Review* 37: 123-172.
- Seear K, Fraser S and Boyd S (2020) A highly charged field: Mapping energies, currents and desires for reform in Canadian expert responses to drug law. *International Journal of Drug Policy*: 102936. Advance online publication. <https://dx.doi.org/10.1016%2Fj.drugpo.2020.102936>
- Sibley MA (2015) Affecting the frame: Risk, vulnerability and sex worker subjectivities. Master's thesis, Carleton University, Ottawa, Canada.
- Sibley MA (2018) Owning risk: Sex worker subjectivities and the reimagining of vulnerability and victimhood. *The British Journal of Criminology* 58(6): 1462-1479. <https://doi.org/10.1093/bjc/azy010>
- Sherman SG, Footer K, Illangasekare S, Clark E, Pearson E and Decker MR (2015) 'What makes you think you have special privileges because you are a police officer?' A qualitative exploration of police's role in the risk environment of female sex workers. *AIDS Care* 27(4): 473-480.
<https://doi.org/10.1080/09540121.2014.970504>
- Sprankle E, Bloomquist K, Butcher C, Gleason N and Schaefer Z (2018) The role of sex work stigma in victim blaming and empathy of sexual assault survivors. *Sexuality Research and Social Policy* 15(3): 242-248.
- Stangl AL, Earnshaw VA, Logie CH, van Brakel W, Simbayi LC, Barré I, Dovidio JF (2019) The health stigma and Discrimination Framework: A global, crosscutting framework to inform research, intervention development, and policy on health-related stigmas. *BMC Medicine* 17(1): 31. <https://doi.org/10.1186/s12916-019-1271-3>
- Wong WCW, Holroyd E and Bingham A (2011) Stigma and sex work from the perspective of female sex workers in Hong Kong. *Sociology of Health & Illness* 33(1): 50-65. <https://doi.org/10.1111/j.1467-9566.2010.01276.x>
- White R and Perrone S (2015) *Crime, criminality and criminal justice*. Melbourne: Oxford University Press.