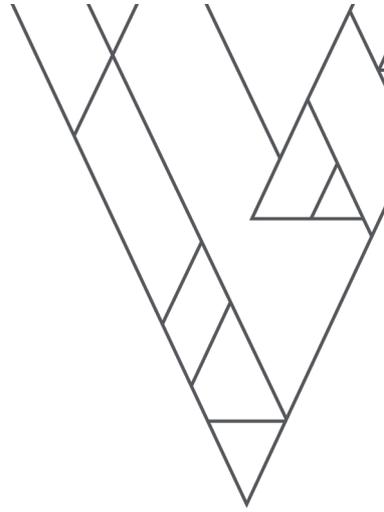


# Discussion Paper

## Decriminalising Sex Work



### Overview

In Victoria, sex work is currently regulated under a legalised model, which means that sex work is only legal if it takes place within the licensing and registration frameworks established by the *Sex Work Act 1994*.

The Victorian Government recognises sex work is a legitimate form of work that should be regulated through standard business laws to safeguard workers and reduce stigma.

The Victorian Government will decriminalise sex work in Victoria to maximise sex workers' safety, health, and human rights, while also reducing stigma and fear of criminal repercussions for sex workers.

The questions in this paper are intended to guide your feedback on the implementation of sex work decriminalisation in Victoria. Your insights will help to ensure that the changes are on the right track and that the decriminalisation of sex work is applied in a way that reflects community attitudes and expectations.

### Background

In November 2019, the Victorian Government asked Fiona Patten MP to lead a review to make recommendations for decriminalising sex work in Victoria.

The review consulted with sex workers, sex worker peer organisations, legal, health and education support service providers, commercial operators and industry organisations, and workplace safety agencies, local and Federal Government agencies, law enforcement agencies, and other community and expert organisations.

After considering the review, the Victorian Government has decided to decriminalise sex work in Victoria. The decriminalisation of sex work will:

- remove offences and criminal penalties for consensual sex work. This will include decriminalising street-based sex work in most locations and repealing public health offences
- repeal the *Sex Work Act 1994* and regulate the sex work industry through existing regulatory agencies
- introduce supporting reforms in areas such as planning, public health and anti-discrimination.

### The current sex work regulatory framework

The current sex work regulatory framework in Victoria has several issues. Most significantly, the current framework perpetuates harm, stigmatisation and discrimination of sex workers who are simply undertaking their work.

### The current system has created a complex, dangerous two-tiered industry



The current system is complex, costly, and onerous. This has led to poor compliance and the growth of a large, unlicensed sex work industry in Victoria, which neither criminalisation nor licensing has been able to eliminate. This system has many negative impacts for sex workers and business operators including:

- increased vulnerability for sex workers who are not registered or who work in unlicensed businesses, including poor access to safe sex equipment, justice and workplace health and safety oversight
- significant costs and time burdens for sex workers and business operators to try to lawfully engage in the market and limited commercial incentives for compliance
- sex workers in non-compliant businesses are particularly vulnerable, facing stigma, mistreatment and an inability to seek help without implicating themselves in illegal activity.

### **Sex workers are at increased risk of experiencing violence**

Sex workers report unsafe working conditions in both the licensed and unlicensed sectors. These workplace safety issues include:

- increased risk of occupational violence
- a lack of understanding of the organisational health and safety needs of the sex work industry
- poor access to justice if a crime was committed at work
- poor quality and security of working premises.

These issues are exacerbated by the lack of autonomy, stigma and discrimination experienced by sex workers. This has a range of impacts on the health and safety of sex workers at work and in the community.

### **Sex workers experience persistent discrimination and stigma in the community**

Destigmatising the sex work industry and reducing discrimination is essential for protecting people working in the industry and shifting public perceptions of sex work. Entrenched negative perceptions of the sex work industry impacts sex workers' mental health, reinforces attitudes that drive violence against sex workers, creates barriers to accessing healthcare, social services and housing, and limits educational and employment opportunities for workers, including those who wish to leave the industry.

### **Criminalisation limits the agency and independence of sex workers to make free and fair choices about their life and participation in a legal industry**

The existing framework implies that sex work businesses and sex workers require a criminalisation approach from the government to reduce harm to the community. However, the result of this approach is not less harm for the community, but increased harm to sex workers.

### **Criminalising sex work reduces sex workers' access to justice**

Many sex workers are unwilling to report instances of violence, mistreatment, or suspected trafficking out of fear they may be prosecuted. The current criminalisation approach pushes the sex industry further underground beyond the sight of regulators, support services and the community.

### **Criminalising street-based sex work impacts sex workers' safety and welfare**

Street-based sex workers are more vulnerable due to a range of issues, including homelessness, substance misuse and/or pre-existing trauma. The criminalisation of street-

based sex work undermines workers' safety and rights. It also inhibits their ability to access essential services and forces sex workers to operate in risky and dangerous ways to avoid prosecution.

### **Restricting sex work businesses to certain areas creates safety risks for sex workers and have not been proven to work**

Restricting sex work businesses to industrial zones makes sex workers more vulnerable to crime due to the lack of public transport, limited foot traffic and poor lighting

### **Other models of decriminalisation cause harm to sex workers**

Models of decriminalisation that criminalise clients but not workers can make sex work more dangerous. Research shows that sex workers who were financially dependent on clients are compelled to accept clients who refuse to give their legal names or insist on remote locations. This means sex workers are unable to practice harm reduction strategies for safety.

## **What decriminalisation of sex work will look like?**

To decriminalise sex work, the Victorian Government will:

- regulate the sex work industry just like any other industry, by agencies such as local government, Worksafe and the Department of Health
- remove offences and criminal penalties for consensual sex work, including street-based sex work in most locations
- repeal the sex work licensing system, the *Sex Work Act 1994* and associated regulations, and regulate the sex work industry through standard business laws
- repeal offences related to mandatory testing and sexual health and introduce a new public health and infection control framework for the sex work industry focused on health promotion and harm reduction
- strengthen anti-discrimination protections for sex workers under the *Equal Opportunity Act 2010*
- amend planning controls under the *Planning and Environment Act 1987* to support decriminalisation and reduce harm for sex workers
- remove outdated advertising controls and restrictions on sex work businesses holding liquor licences.

### **Offences and criminal penalties**

The Victorian Government is decriminalising street-based sex work in most locations. Soliciting or loitering for the purposes of street-based sex work will still be illegal where it occurs near or within view of a place of worship, school or other select locations frequented by children.

Additionally, the Victorian Government will dismantle the sex work licensing and registration system established by the *Sex Work Act 1994*. This means there will be no criminal penalties associated with operating a sex work business without a licence, or for working as an independent sex worker without being registered as an exempt owner-operator.

Criminal offences relating to children, coercion and other forms of non-consensual commercial sexual activity will continue to apply. Specifically, offences under the *Sex Work Act 1994* which concern children and coercive commercial sexual activity will be moved to the *Crimes Act 1958*. The Victorian Government will continue to explore means of addressing sexual assault to

reduce harm within the sex work industry and awaits the delivery of the Victorian Law Reform Commission report into Improving the Response of the Justice System to Sexual Offences.

### Public health

The stigma surrounding sex work and sexually transmitted diseases is a perception that is not supported in evidence. Evidence indicates that sex workers have comparatively higher rates of compliance with safer sex practices and low rates of sexually transmitted infections than the general population.

In addition, existing criminal laws that make it an offence to recklessly cause (or engage in conduct that may cause) serious injury, including infecting someone with a sexually transmitted disease, already apply to the sex work industry.

To address this stigma and treat the sex work industry in an equivalent manner to other industries, the Victorian Government is repealing public health offences from the *Sex Work Act 1994*. This means sex workers will no longer be required to undergo mandatory sexual health testing, nor will there be criminal repercussions for failing to practice safer sex.

To support decriminalisation, the Department of Health will be developing a new public health and infection control framework for the sex work industry, with a key focus on health and wellbeing. The proposed sex work reform will strengthen public health action for sex workers, including access to sexual health and wrap around support services through community education and engagement.

### Anti-discrimination protections

To protect sex workers from discrimination, the Victorian Government is amending the *Equal Opportunity Act 2010* to include a new protected attribute of 'Profession, trade, occupation or calling'.

Section 62 of the *Equal Opportunity Act 2010* – which currently provides that it is lawful for a person to refuse accommodation to another person on the basis that they intend to use it for lawful sexual activity on a commercial basis – will also be repealed. This will address stigmatising social attitudes relating to sex work and remove a barrier to sex work taking place in safe locations.

To address economic and social barriers that arise from having a criminal record associated with sex work, people with historical sex work convictions may also be eligible to have their convictions spent under the Spent Convictions Scheme introduced by the *Spent Convictions Act 2021*.

### Advertising and liquor licensing

The Victorian Government is removing antiquated controls on advertising by sex work service providers under the *Sex Work Act 1994*. The current advertising controls imposed on sex work businesses are discriminatory in nature, unfair in their application to the sex work industry, reinforce stigma against sex workers and put sex workers at increased risk of harm.

Sex work advertising will still be required to comply with all other laws and regulations governing advertising in Victoria and Australia more broadly. The Victorian Government will monitor sex work advertising following decriminalisation and retain the power to put in advertising controls through regulations if required.

The decriminalisation of sex work will also allow brothels to apply for a liquor licence subject to the standard liquor licensing framework established under the *Liquor Control Reform Act 1998*.



## Planning controls

Planning controls for the sex work industry are currently established under the *Planning and Environment Act 1987* and Part 4 of the *Sex Work Act 1994*.

Upon repeal of the *Sex Work Act 1994*, the Victorian Government will establish a new planning framework for the industry to support decriminalisation. This framework will have a clear focus on harm reduction for sex workers, and implementation of controls which are proportionate and reasonable.

Two categories of sex work businesses are proposed for consideration – commercial and home-based – to account for different amenity impacts of each type of land use.

It has been decided that, subject to appropriate planning controls:

- commercial sex work businesses will be able to operate in commercial and residential zones
- sex workers will also be able to operate a home-based business.

Establishing planning controls that are proportionate and reasonable (rather than unnecessarily restrictive) is more likely to result in sex work businesses complying with planning requirements, with corresponding benefits to councils, the local community and health service providers.

## Separation distances

<b>Proposed outcomes</b>	Sex work businesses are treated the same as any other business and regulated through planning controls which apply to all businesses in Victoria.
<b>Current issues</b>	<p>Under the <i>Sex Work Act 1994</i>, sex work businesses are prohibited from establishing within 200 (other than in parts of the City of Melbourne) metres of a place of worship, hospital, school, education and care services premises, children’s services centre or any other facility or place regularly frequented by children for recreational or cultural activities.</p> <p>These separation requirements are discriminatory, reinforce harmful social stigma towards sex workers and are a barrier to sex work taking place in safe locations.</p>
<b>Changes being considered</b>	<p>The <i>Sex Work Act 1994</i> will be repealed and the use and development of land for sex work will be regulated under the <i>Planning and Environment Act 1987</i>. The Victoria Planning Provisions will be amended to implement non-discriminatory planning controls which support decriminalisation and harm reduction for sex workers.</p> <p>It is proposed that there will be no separation distance requirements between sex work businesses and particular land uses, including dwellings.</p>



<b>Issues for consideration</b>	<ul style="list-style-type: none"> <li>• Should commercial sex work businesses be separated from sensitive land uses (for example, schools, childcare, kindergarten, hospitals, residential and cultural activities)?</li> <li>• Should home-based sex work businesses be separated from other sensitive land uses?</li> <li>• What should be the appropriate separation distances (if any) between commercial sex work businesses and sensitive land uses?</li> <li>• What should be the appropriate separation distances (if any) between commercial sex work businesses and residential dwellings?</li> <li>• What should be the appropriate separation distances (if any) for home-based sex work businesses and sensitive land uses?</li> </ul>
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### Commercial sex work businesses

<b>Proposed outcomes</b>	<p>Commercial sex work businesses are treated like most other businesses, and only subject to additional planning restrictions which are proportionate and reasonable.</p> <p>Sex work businesses are not to be discriminated against in planning permit applications.</p>
<b>Current issues</b>	<p>The <i>Sex Work Act 1994</i> and current planning regulations prohibit the establishment of commercial sex work businesses in a range of land-use zones.</p> <p>In practice, this means commercial sex work businesses have been largely pushed to industrial areas.</p> <p>There are obvious safety concerns for workers in limiting the operation of large, commercial sex work businesses to industrial areas. Lack of public transport, limited foot traffic and poor lighting makes a sex worker's commute to and from work more dangerous than if they were able to work in other areas.</p>
<b>Changes being considered</b>	<p>The Victoria Planning Provisions will be amended to allow commercial sex work businesses to operate in commercial and residential zones, subject to appropriate requirements.</p>
<b>Issues for consideration</b>	<ul style="list-style-type: none"> <li>• What is the appropriate size limit (for example, floor area, number of rooms or sex workers) of a commercial sex work business (if any)?</li> <li>• Is there a continued need to limit the number of rooms in a commercial sex work business?</li> <li>• Should there be different planning controls for the location of commercial sex work business in different zones?</li> <li>• Should the number of sex work businesses in a given location be a consideration when determining permit applications?</li> <li>• Should a planning permit be required for a sex work business? If so, what considerations should apply for councils considering permit applications for sex work businesses?</li> </ul>



## Home-based businesses

<b>Proposed outcomes</b>	Home-based sex work businesses are treated the same as any other home-based business and regulated through planning controls which apply to all home-based businesses in Victoria.
<b>Current issues</b>	<p>Sex workers are not permitted to operate from their own home without a permit, unlike most other home-based businesses.</p> <p>Sole operators and small-scale sex work businesses face onerous planning and zoning restrictions akin to those for large, commercial brothels, which prohibit them operating in residential zones.</p>
<b>Changes being considered</b>	<p>Repeal the <i>Sex Work Act 1994</i> and amend the Victoria Planning Provisions to allow sex workers to operate home-based businesses under the same planning controls as any other home-based businesses.</p> <p>This will mean that subject to meeting certain amenity impact thresholds (for example number of workers or floor area of the dwelling), a sex worker operating a home-based business would not need a planning permit.</p>
<b>Issues for Consideration</b>	<ul style="list-style-type: none"> <li>• Should home-based sex work businesses be able to operate without a permit subject to the same planning requirements as other home-based business?</li> <li>• What is the appropriate number of workers in a home-based sex work business (who reside in the dwelling or otherwise)?</li> <li>• Is there a need to limit the number of rooms used for sex work in a home-based business?</li> <li>• What other considerations should there be for councils considering permit applications for home-based sex work businesses?</li> </ul>

## Signage

<b>Proposed outcomes</b>	Signage and advertising for sex work businesses are subject to the same planning controls applicable to other businesses.
<b>Current issues</b>	<p>The <i>Sex Work Act 1994</i> and Sex Work Regulations 2016 govern advertising for sex work businesses.</p> <p>Upon repeal of the Act and its associated regulations, government will ensure controls about the content and placement of signage for sex work businesses are appropriate.</p> <p>Inappropriate advertising signage has the potential to impact public amenity and the character and image of local government areas. There is also the risk of inadvertently exposing children to sex work via signage and other promotion.</p>



<b>Changes being considered</b>	<p>Regulation of sex work business advertising will be aligned with regulation for similar industries, such as live sexually explicit entertainment.</p> <p>Existing planning controls which apply to signs for businesses operating a home-based business or operating in certain zones will apply equally to sex work businesses. For example, restrictions on size, location and lighting. These requirements do not relate to content.</p> <p>Local governments will continue to be able to make and enforce their own local laws regarding general community amenity.<sup>1</sup></p>
<b>Issues for consideration</b>	<ul style="list-style-type: none"><li>• Should there be specific requirements restricting signage associated with sex work businesses?</li></ul>

## Have your say

The Department of Justice and Community Safety (DJCS) invites feedback from members of the public, community groups, organisations and industry to inform the implementation of sex work decriminalisation in Victoria.

The discussion questions below are intended to guide your feedback and can be used to complete a survey and/or provide a written submission on the Engage Victoria website. Your insights and feedback will help to ensure that the changes are on the right track and that the decriminalisation of sex work is applied in a way that reflects community attitudes and expectations.

- How can the Victorian Government better work with and support the sex work industry to achieve better outcomes for sex workers and the industry?
- What can the Victorian Government do to promote understanding of the changes involved in the decriminalisation of sex work?
- To enable the appropriate regulation, changes will need to be made to planning controls as set out in this discussion paper. This could include changes to where sex work businesses can operate. What are your views on these changes?
- To enable the decriminalisation of sex work, changes will need to be made to laws and regulations governing offences and criminal penalties, public health, anti-discrimination protections, and advertising and liquor licencing. What are your views on these changes?
- What other factors do you think are important for the Victorian Government to consider in ensuring the successful implementation of sex work decriminalisation in Victoria?

You can respond to these questions by:

1. completing the survey or uploading your own submission on our consultation page (<https://engage.vic.gov.au/sex-work-decriminalisation>)
2. sending a written submission to:

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<sup>1</sup> Film, television, radio, and publications will continue to be regulated under existing Commonwealth Regulations. Federal agencies will investigate breaches of Commonwealth Regulations. The Australian Consumer Law will continue to apply to false and misleading advertisements generally. The Australian Competition and Consumer Commission can act on breaches of the Australian Consumer Law. CAV will continue to enforce the Australian Consumer Law but are no longer responsible for industry-specific advertising regulations.



Sex Work Decriminalisation,  
Department of Justice and Community Safety  
GPO Box 4356  
Melbourne VIC 3001

3. emailing your submission to [swd@justice.vic.gov.au](mailto:swd@justice.vic.gov.au).

## Next Steps

Your feedback and ideas are important in shaping the future of a safe, decriminalised sex work industry. Please complete the survey via the Engage Victoria website and/or provide a written submission before 27 August 2021.

At the end of the consultation period, DJCS will review all submissions and use the feedback to inform the implementation of the sex work decriminalisation in Victoria. DJSC may also publish the major themes collected from the survey and written submissions on the Engage Victoria website. All submissions will be de-identified and no personal, health or sensitive information will be included when the summary is published.

If you have any questions or require further information, please contact us at [SWD@justice.vic.gov.au](mailto:SWD@justice.vic.gov.au)

## Terms of Reference

The Terms of Reference for the Sex Work Review led by Fiona Patten MP can be found at <https://www.vic.gov.au/sex-work-decriminalisation>.