



Safety. Equality. Justice.

**Sex Work Law Reform Victoria Inc.
(Equality. Safety. Justice)**

Email - contact@swlrv.org.au
Postal Address - PO Box 3071
South Melbourne
VIC 3205
Phone: 0420 644 330

Web - www.sexworklawreformvictoria.org.au
ABN: 53 356 166 772

Sex Work Decriminalisation
Department of Justice and Community Safety
GPO Box 4356
Melbourne VIC 3001
By email: SWD@justice.vic.gov.au

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Dear Sex Work Decriminalisation,

The Decriminalisation of Sex – Stage One Regulatory Changes

Sex Work Law Reform Victoria Inc. (SWLRV) is an independent non-partisan volunteer group led by sex workers, lobbying for the legal rights of sex workers in Victoria.

SWLRV advocates for, amongst other things:

- the full decriminalisation of sex work, its implementation, and the rollout of accompanying regulatory reforms in Victoria.

With the passage of the *Sex Work Decriminalisation Bill 2021*, we are grateful that the Department of Justice and Community Safety and the Department of Environment, Land Water and Planning are now working to rollout and implement accompany regulatory reforms to ensure the principles of the decriminalisation of sex work become a reality. We appreciate this opportunity to contribute to this consultation.

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1. Executive Summary

The decriminalisation of sex work will require the sex industry to be fully integrated into the regulatory framework which applies to comparable personal service industries in Victoria. We are pleased the Victorian Government is amending advertising controls and reducing sex industry licensing fees in the lead up to the repeal of the *Sex Work Act 1994*. Amendments to the *Victoria Planning Provisions* to bring sex workers in line with hairdressers are also welcome. To address the issue of some councils repeatedly and unlawfully refusing brothel planning permits, innovative additional measures may need to be introduced.

2. Summary of Recommendations

Recommendation 1

The Victorian Government to repeal all Victorian sex industry specific advertising regulations contained in the Sex Work Regulations 2016, as part of Stage One.

Recommendation 2

The Department of Environment, Land Water and Planning to closely monitor the administration of sex services premises planning permits in the five years following the commencement of Stage Two on 1 December 2023.

Recommendation 3

Leading up to Stage 2 on 1 December 2023, the Department of Environment, Land Water and Planning must provide specific, detailed written guidance on how councils are to process and administer brothel planning permits.

3. Summary Offences Regulations 2022

Regrettably, the *Sex Work Decriminalisation Bill 2021* retains some offences associated with public sex work solicitation in some locations, at certain times of the day, and on certain prescribed days of the year. The sex worker community overwhelmingly opposed the retention of these offences, with our submission to the *Scrutiny of Acts and Regulations Committee* arguing such offences breached the human rights of street-based sex workers.¹

The bill effectively moves some existing street sex work offences from the soon to be repealed *Sex Work Act 1994* into the existing *Summary Offences Act 1966*. The accompanying *Summary Offences Regulations*, which are currently under development, will prescribe days of the year in which street sex work is prohibited. It is important the regulations unambiguously state exactly which days are prescribed, so the sex worker community is clear about these requirements.

4. Proposed changes to the Sex Work (Fees) Regulations 2014

The unusually high sex industry licencing fees, as laid out in the *Sex Work (Fees) Regulations 2014*, were a major contributing factor driving most brothels into the illegal sector. We welcome the Department's intention to waive most licensing fees after 1 July 2022, including to reduce fees on a pro rata basis. We note this reduction in fees will occur *prior* to the repeal of the *Sex Work Act 1994* on 1 December, 2023.

5. Proposed changes to the Sex Work Regulations 2016

Some sections of the *Sex Work Act 1994* impose a range of advertising controls, above and beyond those imposed on other similar service industries. We welcome the repeal, on 10 May 2022 (Stage One) of these advertising controls from sections of the *Sex Work Act*.

Additional sex industry specific advertising regulations are found in the existing *Sex Work Regulations 2016*. We welcome the Department's review of these regulations to assess whether they overlap or replicate any existing state or federal advertising/content laws. The fact sheet, 'Proposed changes to the *Sex Work Regulations 2016*' provides a rationale for repealing individual advertising

¹ Sex Work Law Reform Victoria, Alert Digest No 14 of 2021 submission to the Scrutiny of Acts and Regulations Committee (Parliament of Victoria), *Sex Work Decriminalisation Bill 2021* (19 October 2021)

regulations, and correctly identifies the fact that many of the existing sex work advertising regulations duplicate existing Commonwealth Acts. Furthermore, we welcome the Department's analysis of these regulations, to determine whether they are consistent with the purposes of the Sex Work Decriminalisation Bill 2021.

We welcome the intention of the Department to repeal all Victorian sex industry-specific advertising rules. We have long argued that other relevant Commonwealth and Victorian laws² relating to advertising will continue to apply and regulate sex industry advertising.

Recommendation 1

The Victorian Government to repeal all Victorian sex industry specific advertising regulations contained in the Sex Work Regulations 2016, as part of Stage One.

6. Planning scheme changes to support the decriminalisation of sex work

The existing *Victoria Planning Provisions (VPPs)* are highly discriminatory towards the sex industry and have greatly contributed to driving most brothels into the illegal sector. Some of the problems with the existing VPPs are that they:

- create a separate and different definition of brothel from the *Sex Work Act 1994*.
- severely and unreasonably restrict the number of zones brothels can lawfully operate in.
- outright prohibit brothels in most zones.
- explicitly exclude sex work from the definition of 'home based business',³ imposing a barrier to the lawful provision of incall services by independent sex workers. The VPPs prohibition against the provision of incall services exists in addition to criminal offences in the *Sex Work Act 1994*, which also prohibit independent sex workers from working from home.

We welcome the Department's proposal to introduce a new land use term 'sex services premises' to be nested under 'shop' so that the sex industry is treated, for the purposes of planning, in the similar manner as hairdressers.

Home Based Sex Work

We very much welcome amending the definition of 'home based business' to include sex work. Our 2020 consultation with Monash University's *Michael Kirby Centre* assisted our submission to Fiona

² *The Crimes Act 1958 (Vic)*, the *Summary Offences Act 1966 (Vic)*, the Australian Consumer Law, the Australian Advertising Standards Authority, the *Classification (Publications, Films and Computer Games) Act 1995 (Cth)* and linked Victorian enforcement law, the *Radiocommunications Act 1992 (Cth)* and the *Broadcasting Services Act 1992 (Cth)*.

³ Clause 73.03 of the *Victoria Planning Provisions*

Patten's Review of Victoria's sex work laws. The issue of home-based sex work consistently arose as a priority for sex workers. We note that the VPPs already restrict and regulate all home-based businesses⁴ and there is no reason to believe such controls will be insufficient to address home based sex work businesses. After New South Wales decriminalised sex work, councils in that state reported close to zero amenity impact complaints about home-based sex work.⁵

Properly Informing Councils of Changes

In our extensive engagement and consultation with local government, it is clear some councils will fiercely resist the Department's proposed changes to the VPPs. Although, at their core, the amendments are largely administrative in nature, some conservative councils adopt a 'moral panic' response to the decriminalisation of sex work and its accompanying reforms.⁶ We urge the Victorian Government to use the available time (until 1 December 2023) to thoroughly brief councils and their numerous representative bodies, so that local governments are fully prepared and ready to administer the new VPP's in 2024.

Unlawful Administration of the *Victoria Planning Provisions*

We anticipate that some conservative councils, fundamentally opposed to all brothels and home-based sex work, will object to the proposed amendments to the VPPs. We anticipate that some councils will resort to unlawful means in their attempts to prevent the establishment of any new lawfully operating brothels in their LGAs. The Victorian Civil and Administrative Tribunal (VCAT) has jurisdiction to review planning permit decisions⁷, including brothel planning permit decisions. The **Appendix** to this submission lists examples of Victorian councils violating sex workers' rights and engaging in hostile or anti-sex work conduct.

One aspect of council conduct that we are particularly disturbed by, is councils paying private investigators to entrap unsuspecting sex workers in suspected illegal brothels. These private investigator entrapment operations are ongoing, despite police currently being responsible for investigating illegal brothels. After the *Sex Work Act 1994* is fully repealed, we are concerned that councils may become further involved in inappropriate entrapment tactics, because the burden of investigating unlawful brothels will fall exclusively on councils.

We are extremely concerned about the possibility of unaccountable private investigators engaging in sexual conduct with sex workers as part of their investigations. See Appendix for further details.

⁴ Clause 73.03 of the *Victoria Planning Provisions*

⁵ O'Mullane, M., 2015. The Subversion of Progressive Intent; The realities of sex work policy: When and how it is enforced, Sydney, Touching Base Incorporated.

https://www.touchingbase.org/wp-content//2015/11/TBASE_UTS_Research_Factsheetfinal.pdf

⁶ See Boroondara City Council Meeting, 27 September 2021, Deputations

https://www.youtube.com/watch?v=uD_5KuwZkiQ

⁷ <https://www.vcat.vic.gov.au/case-types/planning>

We are not aware of any evidence that sexual contact during entrapment operations has occurred in Victoria in the last twelve years.

Poor administration of brothel planning permits has already occurred in Victoria and New South Wales in the form of councils unlawfully refusing brothel planning permits. One example is the Campaspe Shire Council refusing a brothel permit in the Victorian town of Echuca in 2007. The decision was later overturned by VCAT.⁸ In recent years there have not been further permit disputes at VCAT because prospective brothel owners have recognised how hostile the system is to the sex industry and have simply stopped applying for brothel planning permits. The system is hostile to licensed brothels, via:

- high sex industry licensing fees
- very slow processing of brothel owner/manager license applications on the part of the Business Licensing Authority
- existing planning schemes restricting brothels to industrial zones
- a proliferation of illegal brothels, which represents competition
- the unlawful refusal of brothel planning permits by some councils

This phenomenon is well known within the industry, and the number of licensed brothels has been decreasing in recent years.⁹ In New South Wales, this problem has resulted in the establishment of Local Planning Panels,¹⁰ whose objectives include:

- better planning outcomes through greater expertise, independence, and probity in decision-making¹¹

The potential problem is that while in theory VCAT has jurisdiction to review planning decisions, in practice many small businesses lack the resources or time to lodge VCAT applications of this nature.

⁸ Hepner v Campaspe SC (Red Dot) [2007] VCAT 2122 (14 November 2007)

⁹ From a peak of a 100 in 2013, to 88 licensed brothels in 2021.

<https://sexworklawreformvictoria.org.au/why-is-the-number-of-legal-brothels-decreasing/>

¹⁰ NSW Government, 'Common questions about Local Planning Panels', *NSW Department of Planning, Industry and Environment* (web page, 13 October 2020)

<https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Local-Planning-Panels/Frequently-asked-questions>

¹¹ NSW Government, 'LPP objectives and evaluation', *NSW Department of Planning, Industry and Environment* (web page, 9 March 2020)

<https://www.planning.nsw.gov.au/Assess-and-Regulate/Development-Assessment/Local-Planning-Panels/Evaluation-framework>

In this way, widespread unlawful refusal of brothel planning permits can act as a form of de facto prohibition on sex industry businesses.

We must avoid a situation in which councils will unlawfully refuse brothel planning permits in the first instance. The Department of Environment, Water and Planning fact sheet clearly indicates that of the 17 planning zones listed, 10 of these zones will require a planning permit. It is unacceptable for brothel owners to have to routinely rely on VCAT reviews to obtain fair treatment by councils. We need to create conditions and an environment in which brothels obtain fair treatment in the first instance.

We note that the *Sex Work Decriminalisation Act 2021* provides for a review of the operation of its amendments no later than five years after the second stage commences on 1 December 2023. Anticipating that there may be problems with the administration of sex services premises planning permits, we suggest that the situation be closely monitored following the commencement of Stage 2. It is unacceptable to wait to address any issues until the five-year review mark.

We urge the Department to provide ongoing guidance and training to councils and their representative bodies on how to process and administer brothel planning permits. This includes providing specific, detailed written guides.

Recommendation 2

The Department of Environment, Land Water and Planning to closely monitor the administration of sex services premises planning permits in the five years following the commencement of Stage Two on 1 December 2023.

Recommendation 3

Leading up to Stage 2 on 1 December 2023, the Department of Environment, Land Water and Planning must provide specific, detailed written guidance on how councils are to process and administer brothel planning permits.

7. Appendix

Specific examples of local governments in Victoria engaging in practices hostile to sex workers' rights. This is provided to illustrate the level of hostility some local governments exhibit towards sex work. This list is by no means exhaustive.

Year	Council	Anti-Sex Work Conduct
2021	City of Melton	Council confirmed it uses council funds to pay its own staff to engage in entrapment operations against unsuspecting sex workers inside suspected illegal brothels. ¹²
2021	City of Melton	At a council meeting, councillors voted 8 to 1 in favour of a motion to commence a fear-based campaign against sex work. The campaign would target parents and grandparents. Council indicated it held grave concerns for child safety. ¹³
2021	City of Melton	At a council meeting Council tabled a report which confirmed ‘Council fundamentally believes that the current regulatory framework [sex work licensing, in which the vast majority of sex workers are criminalised] for sex work is adequate within the City of Melton.’ ¹⁴
2021	City of Boroondara	At a council meeting, councillors voted 10 to 1 in favour of a motion to ‘oppose the Victorian Government’s decision to decriminalise sex work’. ¹⁵
2021	City of Boroondara	At a council meeting, councillors voted, 10 to 1 in favour of a motion to commence a fear-based campaign against sex work, ‘Use all Council communication channels to inform the community regarding the changes to the sex work businesses and to encourage them to provide feedback to the Victorian Government.’ ¹⁶
2011 – 2020	City of Kingston	Over eleven years, Council spent over \$70,000 of ratepayer’s money to pay private investigators and a private law firm to engage in entrapment operations against unsuspecting sex workers inside suspected illegal brothels. ¹⁷
2020	Brimbank City Council	Council voted to endorse its submission to Fiona Patten’s sex work review. The submission supports the retention of elements of the existing sex work licensing system which criminalises many aspects of consensual adult sex work. ¹⁸
2020	Brimbank City Council	Council published submissions about sex work and voted on sex work motions without having ever consulted or spoken to any sex workers or sex worker organisations. ¹⁹

¹² Email released by Melton City Council’s Public Transparency Policy, 30 November 2021, Manager Planning Services

¹³ Melton City Council, Council Meeting Minutes, 22 November 2022, Motion 12.6

¹⁴ See ibid.

¹⁵ City of Boroondara, Council Meeting Minutes, 6 September 2021, Motion 5.2

¹⁶ See ibid.

¹⁷ Documents released via freedom of information on 20 October 2021. Tax invoices issued to the City of Kingston. Between 2011 and 2020, total value of entrapment invoices was \$70,281. Freedom of information request dated 6 May 2021 with City of Kingston FOI reference number FOI-21/14

¹⁸ Brimbank City Council, Council Meeting Minutes, Meeting Number 577, 18 August 2020, Item 12.9

¹⁹ Brimbank City Council, Council Meeting Minutes, Meeting Number 577, 18 August 2020, Item 9.9

2020	Brimbank City Council	In 2020, Council spent over \$20,000 of ratepayer's money to pay private investigators and a private law firm to engage in entrapment operations against unsuspecting sex workers inside suspected illegal brothels. ²⁰
2019	Brimbank City Council	Council voted (12 to 1) to commence spending council funds to pay private investigators to commence entrapment operations against unsuspecting sex workers inside suspected illegal brothels. At the time of publication, Council has neither confirmed nor denied that such private investigators engaged in sexual activity with the sex workers. ²¹
2011	City of Yarra	A council enforcement officer, Ken Wolfe, is investigated by Victoria Police for corruptly accepting \$130,000 in cash payments from an illegal brothel. ²²
2007	City of Yarra & Melbourne City Council	Both councils repeatedly paid private investigators to entrap and engage in deceptive sexual conduct with unsuspecting sex workers inside suspected illegal brothels. ²³
2007	Campaspe Shire Council	Council refused a brothel planning permit. Upon review, VCAT overturned the decision and ordered Council approve the brothel planning permit. ²⁴
2006	Greater Shepparton City Council	Council refused a brothel planning permit. Upon review, VCAT overturned the decision and ordered Council approve the brothel planning permit, as the brothel would not negatively impact nearby properties. ²⁵

²⁰ Documents released via freedom of information. Tax invoices issued by Sherwell Harison Munroe Lawyers to Brimbank City Council. Throughout 2020, total value of entrapment invoices was \$20,409. Freedom of information request dated 20 October 2020 with Brimbank City Council FOI reference number SUB/026151.

²¹ Brimbank City Council, Council Meeting Minutes, Meeting Number 554, 21 May 2019, Resolution on Report 12.13

²² Cameron Houston, 'Councils targeted in illegal brothels probe' (16 October 2011) The Age

<https://www.theage.com.au/national/victoria/councils-targeted-in-illegal-brothels-probe-20111015-1lqlk.html>

²³ <https://www.smh.com.au/national/some-vic-councils-paying-for-brothel-sex-20070125-gdpbol.html>

²⁴ Hepner v Campaspe SC (Red Dot) [2007] VCAT 2122 (14 November 2007)

²⁵ Cahill & Ors v Greater Shepparton CC & Russell [2006] VicPRP 51; (2006) 23 VPR 153 (25 May 2006)