

# Planning scheme changes to support the decriminalisation of sex work

## Information sheet

Find out about proposed planning scheme changes to support the decriminalisation of sex work in Victoria.

### Government is decriminalising sex work

The Victorian Government is decriminalising sex work to ensure that every worker in the industry has the same rights and access to entitlements and protections under law, as they would in any other job.

In Victoria, sex work is currently regulated under a legalised model, which means sex work is only legal if it takes place under certain conditions set out in the *Sex Work Act 1994* (Sex Work Act). Part 4 of the Sex Work Act and Victoria's planning schemes work together to regulate the use and development of land for brothels and restrict who may apply for a planning permit, where a brothel may be established and its size.

A key element of decriminalising sex work is the repeal of the Sex Work Act, including the planning controls in Part 4. To support the proposed repeal of the Act and the government's objectives for decriminalisation, the way planning schemes regulate sex work needs to be reformed.

### Objective

The objective is to support the government's decriminalisation of sex work to:

- improve the safety of sex workers
- reduce the stigma around sex work
- address discrimination against sex workers.

This will be achieved by treating sex work in the planning system in the same way as other businesses that provide personal services by removing planning restrictions that prevent:


- brothels from establishing in commercial and mixed-use areas
- sex workers from operating a home based business.

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

### Summary of proposed planning scheme changes

The changes are proposed to be implemented by:

- amending the *Victoria Planning Provisions* (VPP) and all planning schemes to:
  - replace the land use term 'brothel' with a new defined land use term 'sex services premises'
  - delete clause 53.03 (Brothels)

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- regulate sex work in commercial and mixed-use areas in the same way as other personal service businesses (such as those providing beauty, hairdressing or massage services), with no additional restrictions or controls
  - enable sex work to be carried out as a home based business in the same way as other businesses, with no additional restrictions or controls
  - issuing appropriate statutory guidance to planning authorities to ensure that local provisions of planning schemes are consistent with the intent of the planning reforms and decriminalisation of sex work.

The background to the decriminalisation of sex work and each of the proposed planning scheme changes is set out in this information sheet.



# Decriminalising sex work in Victoria

## Why is government decriminalising sex work?

The Victorian Government is decriminalising sex work to achieve better public health and human rights outcomes.

In November 2019, the government asked Fiona Patten MP to lead a review to make recommendations to the Minister for Consumer Affairs, Gaming and Liquor Regulation on decriminalising sex work in Victoria.

The review involved consultation with sex workers, sex worker peer organisations, legal, health and education providers, commercial operators and industry organisations, police and workplace safety agencies, local government, and Federal government agencies as well as other community expert organisations.

The review and government consultation has found that the current system:

- is complex, costly and onerous
- perpetuates stigmatisation of sex work
- promotes and enables discrimination against sex workers
- enables harm against sex workers.

After carefully considering the review, the government decided to decriminalise sex work in Victoria.

Public consultation on the decriminalisation of sex work was conducted by the Victorian Government in August 2021.

For more information on the decriminalisation of sex work, visit: [vic.gov.au/sex-work-decriminalisation](https://vic.gov.au/sex-work-decriminalisation)

## Key issues with the current system

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

This system has many negative impacts for sex workers and business operators including:

- increased vulnerability of 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 supports
- significant regulatory burden for sex workers and business operators to lawfully engage in the market and limited commercial incentives for compliance.

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.

### 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 due to the stigma and physically isolated workplaces
- a lack of understanding of health and safety issues in the sex work industry, leading to ineffective responses
- barriers to accessing justice if a crime was committed at work
- poor quality and security of some sex work 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 addressing discrimination is essential to reduce harm to 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 have left or wish to leave the industry.

The existing framework limits the agency and independence of sex workers to make free and fair choices about their life and participation in a legal industry.

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 or fined. The current criminalisation approach pushes the sex work industry further underground beyond the sight of regulators, support services and the community.

## **How is decriminalisation being implemented?**

Decriminalisation is being implemented in two stages through the *Sex Work Decriminalisation Act 2022* (Sex Work Decriminalisation Act), pending passage through Parliament.

The main objective of the Act is to abolish the sex work licensing system and regulate sex work businesses through mainstream regulators, such as WorkSafe, the Department of Health and local governments.

The first stage is scheduled to commence in May 2022 and will:

- remove offences and penalties for individuals participating in the act of consensual sex work in most circumstances
- review and amend advertising controls
- repeal the exempt small owner operator register
- introduce anti-discrimination protections for sex workers.

The second stage is scheduled to commence in December 2023 and will include the remainder of the reforms, including repealing the Sex Work Act and commencement of planning scheme changes.

For more information about the Sex Work Decriminalisation Act, visit: [legislation.vic.gov.au/bills/sex-work-decriminalisation-bill-2021](https://legislation.vic.gov.au/bills/sex-work-decriminalisation-bill-2021)

## **Other reforms to support decriminalisation**

There are a range of other reforms related to the discrimination of sex work that are not within the scope of this paper, including regulation of street-based sex work and advertising sex work.

### **Public health**

To support decriminalisation, the Department of Health will be developing a public health framework focused on health promotion and harm reduction. This paper does not seek feedback on this framework.

### **5-year review of reforms**

The Sex Work Decriminalisation Act provides for a review of the operation of the amendments no later than 5 years after the second stage commences.

It is expected that the review would consider whether the Act has achieved its stated purpose of reducing discrimination against, and harm to sex workers, as well as the operation of laws, policies and regulations enacted as a result of the repeal of the Sex Work Act.

The review will be tabled in Parliament.

# Sex services premises

## A new land use term and definition

### The current definition

The land use term 'brothel' is defined in clause 73.03 of the VPP and planning schemes as:

*Land made available for prostitution by a person carrying on the business of providing prostitution services at the business's premises.*

The definition partially aligns with the definition of the term 'brothel' in the Sex Work Act.

### Proposed new land use term and definition

The Sex Work Decriminalisation Act will repeal existing terms and their definitions (including 'brothel', 'sex work' and 'sexual services') in all Victorian legislation.

It is proposed that the term '**sex services premises**' will be used in the VPP and planning schemes to describe land used for sex work with the following proposed definition:

*Land used to sell services involving the use or display of the body of the person providing the service for the sexual arousal or sexual gratification of another person while they are present on the land.*

*It does not include:*

- *Live entertainment performed for an audience, by a person performing an act of an explicit sexual nature, such as lap dancing, nude dancing and striptease.*
- *Sexual activities engaged in by two or more people required to pay an admission fee or charge to enter the premises on the same terms and who do not receive any form of payment or reward, whether directly or indirectly, for engaging in the sexual activities.*

The first part of the proposed definition is based on the definition of 'commercial sexual services' proposed to be inserted into the *Crimes Act 1958* by the Sex Work Decriminalisation Act. This is a broad principles-based definition and may include activities that do not fall within the current VPP definition of 'brothel'.

It is intended that proposed planning scheme changes only apply to the provision of sexual services of a personal nature, not to live entertainment or sex on premises venues such as bathhouses, swingers venues, or pornography or camming where sexual services are not provided by a worker. These types of activities are specifically excluded in the definition.

The exclusions are modelled on the definition of 'sexually explicit entertainment' in the *Liquor Control Reform Act 1998* and the definition of 'sex on premises venue' in the Sex Work Act.

## Location of sex services premises

### Current restrictions on the location of brothels

Planning schemes and Part 4 of the Sex Work Act currently operate together to regulate the use and development of land for a brothel.

In planning schemes, a 'brothel' is:

- a prohibited use in all residential zones and rural zones
- a permit required use in all industrial zones and commercial zones.

Special purposes zones, such as the Capital City Zone and Activity Centre Zone, enable a planning authority to specify which uses require a permit or are prohibited in a schedule to that zone. There may be multiple schedules to zones and they will have varying requirements in relation to brothels depending on where the zone applies and its purpose.

Part 4 of the Sex Work Act contains restrictions on the granting of a planning permit for a brothel. In summary, under section 74 of the Act a planning permit cannot be granted for a brothel:

- in an area that is zoned by a planning scheme as being primarily for residential use
- within 100 metres or, in the case of land within the area of the City of Melbourne bounded by Spring, Flinders, Spencer and LaTrobe Streets, 50 metres of a dwelling other than a caretaker's house
- except in the case of land within the area of the City of Melbourne bounded by Spring, Flinders, Spencer and LaTrobe Streets, within 200 metres of a place of worship, hospital, school, education and care service premises, children's services centre or of any other facility or place regularly frequented by children for recreational or cultural activities.

These separation requirements are discriminatory, reinforce harmful social stigma towards sex workers and are a barrier to sex work taking place in safe locations.

In practice, these restrictions have pushed commercial sex work businesses to industrial areas. There are obvious safety concerns for workers with this approach. A 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.

### Proposed reforms will regulate sex services premises like similar businesses

Controls on where a brothel can be established will be repealed by the Sex Work Decriminalisation Act. To give effect to the government's decision to decriminalise sex work, the controls will not be re-enacted in the VPP and planning schemes.

Instead, sex work businesses will be treated in planning schemes in the same way as other businesses that provide personal services.

This will be achieved by amending the VPP and all planning schemes to:

- delete clause 53.03 (Brothels) which links planning decision making to the Sex Work Act
- delete the term 'brothel'
- insert the term 'sex services premises' (where required)

- align planning controls for a sex services premises with those that apply to a 'shop' in commercial and mixed-use areas.

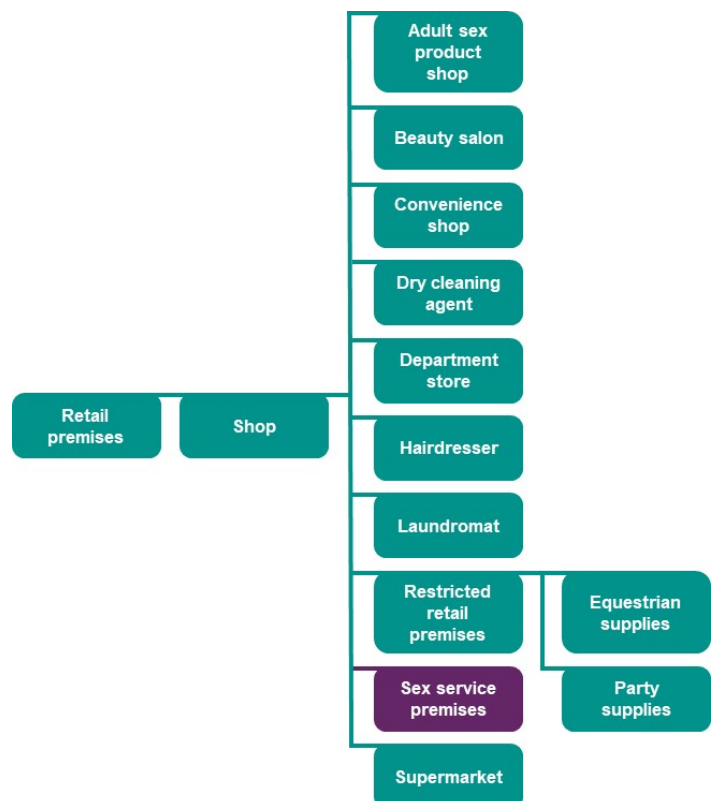
The definition of 'shop' in clause 73.03 of the VPP is:

*Land used to sell goods or services, or to hire goods.*

The term 'shop' includes several other land use terms including 'beauty salon' and 'hairdresser'. Clause 73.03 does not include a specific land use term for massage services. However, a non-medical massage business that doesn't include sexual services would meet the 'shop' definition.

'Shop' is nested under the land use term 'retail premises'. Under the proposed reform, a reference to 'shop' or 'retail premises' in a planning scheme will include 'sex services premises', unless it is specifically excluded. This means that where the use of land for a 'shop' is permitted, a sex services premises will also be permitted and subject to the same conditions and requirements that apply to a 'shop'.

The proposed nesting diagram for clause 73.04 of the VPP is shown below:



A sex services premises will continue to be allowed with a permit in the Industrial 1 Zone, Industrial 2 Zone and Port Zone (where a shop is a prohibited use).

A sex services premises will not require a permit in the Industrial 3 Zone if the condition for 'shop' is met. If the condition is not met, a permit will be required.

These exceptions recognise that a 'brothel' is already a permitted use in these zones and that licensed brothels may already operate there.

Zones are not the only planning scheme controls that regulate the use of land for a 'shop'. For example, under the Melbourne Airport Environs Overlay (Schedule 1) a planning permit is required to use land for a 'shop', even if the use does not require a permit under the zone. These existing controls will apply to the use of land for a sex services premises.

Under the proposed reforms, standard requirements and exemptions for the development of land will apply to a sex services premises in the same way as for other uses. Generally, a planning permit is required to develop land for a shop and so a permit will also be required to develop land for a sex services premises (even if no permit is required for the use).

In zones where the use of land for a 'sex services premises' is permitted, no additional restrictions or controls (beyond those that already apply to a 'shop') will be, included in relation to:

- proximity to other uses (such as dwellings, schools, childcare and places of worship)
- proximity to other sex services premises.

### Proposed zone changes

Each zone in the VPP includes a table of uses that specifies whether a use:

- does not require a permit – Section 1
- requires a permit – Section 2
- is prohibited – Section 3.

The following table shows whether 'sex services premises' will be a Section 1, 2 or 3 use in each zone under the proposed reforms. The table excludes public land zones and special purpose zones where use requirements are specified in a schedule to that zone.

An asterisk\* means that there is condition against 'shop' in the table of uses, which will apply to sex services premises. If a Section 1 condition is not met, the use becomes Section 2 and a permit is required. If a Section 2 condition is not met, the use becomes Section 3 and is prohibited.

Zone	Use
Commercial 1	
	<ul style="list-style-type: none"> <li>• inside metropolitan Melbourne Section 1</li> <li>• outside metropolitan Melbourne Section 1* / 2</li> </ul>
Commercial 2	Section 1* / 2
Commercial 3	Section 2* / 3
Low Density Residential	Section 3
Mixed Use	Section 1* / 2
Township	Section 2
Residential Growth	Section 2* / 3
General Residential	Section 3
Neighbourhood Residential	Section 3
Industrial 1	Section 2
Industrial 2	Section 2
Industrial 3	Section 1* / 2
All rural zones	Section 3
Urban Floodway	Section 3
Urban Growth (where Part A applies)	Section 3
Port	Section 2



## Special purpose zones

In some special purpose zones, such as the Capital City Zone or Activity Centre Zone, the permit requirements for a 'sex services premises' will depend on how the use of land for a 'shop' (or 'retail premises') is regulated in the schedule to the zone.

For example, in schedule 1 to the Capital City Zone, the use of land for a 'sex services premises' will not require a permit because 'retail premises' (which includes 'shop') is listed in Section 1 of the table of uses.

To support the proposed reforms, schedules to special purpose zones will be amended to delete references to 'brothel'.

## Size of sex services premises

Under section 74 of the Sex Work Act, a planning permit cannot be granted for a 'brothel' if more than 6 rooms in the proposed brothel are to be used for sex work. This control will be repealed by the Sex Work Decriminalisation Act.

It is not proposed to introduce any size restrictions for a 'sex services premises' as part of the proposed reforms. However, existing restrictions that apply to a 'shop' will apply to a 'sex services premises'.

For example, land in a Mixed Use Zone can only be used for a 'shop' without a planning permit if the leasable floor area does not exceed 150 square metres.

## Signs and car parking

Existing sign and car parking requirements for a 'shop' are proposed to apply to a 'sex services premises' without change.

Clause 52.06 (Car parking) does not currently specify a required number of car parking spaces for a 'brothel', so these must be provided to the satisfaction of the responsible authority. Under the proposed reform, the same number of car parking spaces required for a 'shop' will apply to a 'sex services premises'. The exemptions in clause 52.06 for uses in commercial zones and the Activity Centre Zone, and the reduced parking rate for land in the Principal Public Transport Network Area, will also apply.

## How will an application for a sex services premises be decided?

Section 73 of the Sex Work Act specifies matters that a responsible authority must consider before deciding an application to use or develop land for a brothel, including:

- any other brothel in the neighbourhood
- the effect of the operation of a brothel on children in the neighbourhood
- the effect on the community of a brothel being located within 200 metres of a place of worship, hospital, school or any other facility or place regularly frequented by children for recreational or cultural activities
- other uses, amenity, off-street parking, landscaping and access
- the proposed size of the brothel, number of workers, and method and hours of operation.

Section 73 will be repealed by the Sex Work Decriminalisation Act.

These decision requirements will not be re-enacted in the VPP or planning schemes or introduce new decision guidelines for 'sex services premises' applications.





# Home based sex work

## Proposed reform to allow home based sex work

The VPP and all planning schemes currently prohibit sex work being carried out as a home based business. This is discriminatory and contributes to the stigmatisation of sex work.

The definition of 'home based business' in clause 73.03 of the VPP is:

*An occupation carried on in a dwelling, or on the land around a dwelling, by a resident of the dwelling. It may include a use defined elsewhere, **but not a brothel.***

Consistent with the proposed reform to regulate sex services premises in the same way as similar businesses, it is proposed to amend this definition to enable sex work to be carried out as a 'home based business'.

Sex work will be able to be carried out as a 'home based business' in any dwelling, including a dwelling located in a zone where a 'sex services premises' will be prohibited.

The use of land for a 'home based business' must comply with the requirements of clause 52.11 (Home based business), including:

- the person conducting the home based business must use the dwelling as their principal place of residence
- no more than two persons who does not live in the dwelling may work in the home based business at any one time
- the net floor area used in conducting the business must not exceed 100 square metres or one-third of the net floor area of the dwelling, whichever is the lesser
- the business must not adversely affect the amenity of the neighbourhood.

Under clause 52.11-2, a permit may be granted to allow:

- three people who do not live in the dwelling to work in the home based business at any one time
- the home based business to occupy up to 200 square metres of floor area of the dwelling.

## Signs and car parking

Existing sign and car parking requirements in a planning scheme for a 'home based business' are proposed to apply to a home based sex work business without change.

Under clause 52.06, the car parking requirement for a 'home based business' is 1 car parking space to each employee not a resident of the dwelling. For land in the Principal Public Transport Network Area, no car parking spaces are required to be provided for a 'home based business'.

# Implementing the proposed reforms

## State planning policy

The Planning Policy Framework (PPF) is the policy content of a planning scheme and provides the context for spatial planning and decision making by planning and responsible authorities.

The PPF will be amended to include policy that:

- supports establishing 'sex services premises' in commercial and mixed-use areas
- planning controls that are non-discriminatory and do not stigmatise sex work or sex workers.

## Local planning scheme provisions and policies

To support the proposed reforms, statutory direction and guidance will be issued to planning authorities to ensure that local provisions of planning schemes are consistent with the intent of the planning scheme changes and decriminalisation of sex work.

Section 12B of the *Planning and Environment Act 1987* (PE Act) requires a planning authority to regularly review its planning scheme. It is anticipated that as part of its review, a review of their Municipal Planning Strategy and local planning policies to ensure they align with the intent of the proposed planning scheme changes and decriminalisation of sex work.

## Planning enforcement

Local governments are responsible for administering and enforcing their planning schemes, including breaches of the planning scheme or planning permits and their conditions.

It is not proposed to introduce any special or different enforcement mechanisms for a sex services premises. Responsible authorities will continue to administer and enforce planning schemes under the provisions of the PE Act.

## Commencement of planning scheme changes

The proposed amendments to the VPP and planning schemes will come into operation at the same time as the repeal of the Sex Work Act. This is expected to occur in December 2023. Before the amendment comes into operation, planning permit applications will continue to be assessed under the existing planning controls.

## 5-year review of planning scheme changes

Concurrent with the legislative review of the sex work decriminalisation legislation, the proposed planning scheme changes will be reviewed 5 years after their commencement.

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