

Proposed changes to the Sex Work Regulations 2016

Implementing the decriminalisation of sex work in Victoria

Background

Sex work is being decriminalised in Victoria to ensure that every worker in the industry has the same rights and access to the entitlements and protections under law, as they would in any other job.

On Thursday 10 February 2022, the Sex Work Decriminalisation Bill 2021 (the Bill) was passed by the Legislative Council of the Victorian Parliament. The Bill will now be returned to the Legislative Assembly, which passed the Bill a first time on 28 October 2021, for a final vote and if passed will become law.

The main objective of the Bill is to decriminalise consensual sex work between adults, abolish the sex work licensing system, and instead regulate sex work businesses through mainstream regulators, such as WorkSafe, the Department of Health, and local governments. In doing so, the Bill will repeal the *Sex Work Act 1994* and make a range of consequential amendments and transitional arrangements.

Pending passage of the Bill, decriminalisation will occur in two stages. Stage One of the Bill's reforms will commence on 10 May 2022 and the Stage Two will commence on 1 December 2023.

As part of reforms to decriminalise sex work, the Victorian Government committed to review advertising controls for the sex work industry to ensure they are fit for purpose and align with the underlying principles of decriminalisation.

The [Sex Work Regulations 2016](#) (the Regulations) are being amended to give effect to this review and implement the Bill (once passed). This document sets out the proposed amendments to the Regulations.

Topics covered in the Regulations and this paper are:

- Sex work advertising controls
- Prescribed details to register as an exempt small owner-operator
- Prescribed details relating to sexually transmitted infections
- Safety requirements for receptionists at sex work businesses
- Sexual slavery signage requirements for sex work businesses

What sex work reforms are happening when, and how do the regulatory changes fit in?

Stage One of the reforms to decriminalise sex work, which commence on 10 May 2022, include legislative changes to advertising controls under the *Sex Work Act 1994* (see details below).

The Regulations will be amended in Stage One to make further changes to advertising controls, requirements for the small owner-operator register and sexually transmitted infections outlined in this document.

Stage Two of the reforms to decriminalise sex work will commence on 1 December 2023 and will repeal the sex work licensing system and the *Sex Work Act 1994*. Sexual slavery signage and receptionist safety requirements will be removed in Stage Two, as detailed in this document.

For more detail about the status of the Bill, the sex work reforms and what will happen at each stage, please visit our website: [Decriminalising sex work in Victoria](#).

What advertising reforms will be made by the Bill before Parliament?

The Sex Work Decriminalisation Bill 2021 makes significant changes to the advertising controls in the *Sex Work Act 1994*. These changes will come into effect in Stage One on 10 May 2022, and mean that:

- Services offered will be able to be described in sex work advertisements.
- Sex work advertisements will be able to broadcast or televised. *It is noted that this is at the discretion of the relevant broadcasting company and relevant federal laws and codes.*



- Vacant positions for sex workers or other positions that may involve sex work will be able to be advertised. *It is noted that deceptive recruitment for commercial sexual services remains a crime subject to level 6 imprisonment.*
- Sex work businesses will be able to use words associated with massage services in advertisements.

These amendments are currently before Parliament and are not subject to further change.

Changes to the Regulations that will occur in May 2022 (Stage One)

Remaining advertising controls in the Sex Work Regulations 2016 will be repealed

Advertising controls in the Regulations have been reviewed and analysed to determine whether they are suitable to be retained after Stage One of the reforms.

Consideration has been given to whether the controls replicate or overlap with other laws or regulatory systems, such as the *Crimes Act 1958*, the *Summary Offences Act 1966*, 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).

Consideration has also been given to whether the regulations are consistent with the purposes of the Sex Work Decriminalisation Bill 2021 and whether they would still be effective following Stage One.

Based on this initial analysis of the Regulations against the policy basis for decriminalisation, it is proposed that all Victorian industry-specific advertising rules should be repealed. Other relevant Commonwealth and Victorian laws will continue to apply.

Table 1 below sets out the rationale for the proposed repeal of each advertising regulation in greater detail.

Table 1: Rationale for repealing each advertising regulation

Advertising Regulation	Reason for repeal
All advertisements for a sex work business must contain the letters “SWA” followed by either their exempt registration number or licensee number and must be printed at a certain size. <i>Sex Work Regulations 2016, Reg 11(1)</i>	Regulation 11(1) is not effective after Stage One, as the requirement for small owner-operator businesses to be registered will be repealed, and thus not all lawful sex work businesses will have SWA numbers.
Advertisements must not contain a false SWA number. <i>Sex Work Regulations 2016, Reg 11(3)</i>	Regulation 11(3) is ancillary to Regulation 11(1), which will be repealed and is no longer necessary.
Advertisements must not show any representation of a person, unless restricted to head and shoulders. <i>Sex Work Regulations 2016, Reg 11(4)(a)</i>	Regulation 11(4)(a) is not consistent with the reform intent to treat sex work businesses the same as similar businesses. Full body images are frequently used in advertising of other industries. There are offences to prevent publication of certain lewd materials under the Victorian and Commonwealth Classification (Publications, Films and Computer Games) laws.



Advertising Regulation	Reason for repeal
<p>Advertisements must not be published through radio, TV, film or video recording.</p> <p><i>Sex Work Regulations 2016, Reg 11(4)(b)</i></p>	<p>Regulation 11(4)(b) duplicates section 17(2) of the <i>Sex Work Act 1994</i> which is repealed by Stage One of the <i>Sex Work Decriminalisation Act 2022</i>. It will be repealed for consistency with that legislation. This regulation also overlaps with the Commonwealth's <i>Classification (Publications, Films and Computer Games) Act 1995</i>, <i>Radiocommunications Act 1992</i> and <i>Broadcasting Services Act 1992</i>, which govern various forms of publication and suitable advertising through those channels. Advertising content is further regulated by the Australian Advertising Standards Authority.</p>
<p>Advertisements must not show any representation of a person unless the person has given written consent.</p> <p><i>Sex Work Regulations 2016, Reg 11(4)(c)</i></p>	<p>Other legal avenues will continue to apply to address unauthorised use of a person's image.</p>
<p>Advertisements must not refer to the health of, or any diagnostic procedures or medical testing undertaken by, the sex worker.</p> <p><i>Sex Work Regulations 2016, Reg 11(4)(d)</i></p>	<p>Regulation 11(4)(d) is inconsistent with reform intent to treat sex workers and sex work businesses the same as other businesses. There is also no evidence to support retaining this requirement as a public health measure.</p>
<p>Internet advertisements for sex work businesses can contain broader representation of a person, as long as there are no bare genitals, bare breasts, or sexual acts (simulated or otherwise).</p> <p><i>Sex Work Regulations 2016, Reg 11(5)(a), (b), and (c)</i></p>	<p>Regulations 15(a), (b), and (c) are inconsistent with reform intent to treat sex workers and sex work businesses the same as other businesses. Nudity can be displayed by similar industries online on adults only (18+) websites without restriction.</p> <p>There are offences to prevent publication of certain lewd materials under the Victorian and Commonwealth Classification (Publications, Films and Computer Games) laws, and advertising content is further regulated by the Australian Advertising Standards Authority.</p>
<p>Internet advertisements for sex work businesses can contain broader representation of a person, as long as it is not a person under 18.</p> <p><i>Sex Work Regulations 2016, Reg 11(5)(d)</i></p>	<p>Photography that includes representation of a child in a sexual context is likely to be considered child abuse material, which is a criminal offence addressed in Part I, Division 1 (8D) of the <i>Crimes Act 1958</i>.</p>
<p>Advertisements are allowed to state the sexual orientation, race, colour or ethnicity of the sex worker and state that condoms are always used.</p> <p><i>Sex Work Regulations 2016, Reg 11(6)</i></p>	<p>Regulation 11(6) is not a restriction, but clarifies the application of Regulation (4)(d), which will be repealed, and other restrictions in the <i>Sex Work Act 1994</i> that will be repealed in Stage One.</p>
<p>A person cannot arrange for other materials to appear in conjunction with an advertisement for a sex work business.</p>	<p>Regulation 11(7) is inconsistent with reform intent as does not apply to other similar industries.</p>



Advertising Regulation	Reason for repeal
<i>Sex Work Regulations 2016, Reg 11(7)</i>	
An advertisement cannot exceed 18 centimetres by 13 centimetres unless it appears in outdoor advertising, electronic communication, or on the internet. If two or more advertisements are published in the same publication, they must not exceed a unified 18 centimetres by 13 centimetres.	Regulations 11(8) and 11(9) overlap with the Victorian and Commonwealth Classification (Publications, Films and Computer Games) laws, which include offences regarding publication of classified material, and is inconsistent with reform intent as does not apply to other similar industries.
<i>Sex Work Regulations 2016, Reg 11(8) and (9)</i>	Advertising content is further regulated by the Australian Advertising Standards Authority.

Minor technical amendments are required to align with Stage One reforms

Regulations that will be redundant following Stage One will be repealed. These include:

- Prescribing diseases for the purposes of the term *sexually transmitted infection*. In Stage One, this term will be repealed from the *Sex Work Act 1994* (regulation 6).
- Prescribing particulars required for the small owner-operator register. In Stage One, the requirement to register will be repealed and the small owner-operator register will be closed (regulation 12).
- References within Schedules 2 and 3 to sections of the *Sex Work Act 1994* that will be repealed in Stage One. These include references to section 17 (advertising controls) and section 24 (the small owner-operator register).

It will remain an infringement offence to contravene the advertising regulations, as this offence is not altered by Stage One of the *Sex Work Decriminalisation Bill 2021*. However, no advertising regulations will be in force.

Changes to the Regulations that will occur in December 2023 (Stage Two)

Requirement to display prescribed sexual slavery signage

The Regulations prescribe the details for displaying sexual slavery signage in conspicuous locations in the reception and other rooms used for sex work, including text size and non-English translations (regulations 13 and 14). It is a requirement for all sex work licensees to display these signs.

These regulations will remain unchanged until the repeal of the *Sex Work Act 1994* in December 2023 (Stage Two), at which point these regulations will be repealed in full.

Safety requirements for receptionists

The Regulations state that receptionists cannot misrepresent the qualities of a sex worker or negotiate services on behalf of a sex worker, with penalties for licensees and approved managers of a non-compliant business (regulation 7).

The Regulations also require that the Business Licensing Authority consider whether licence applicants have provided evidence that they will make their employees aware of these requirements and ensure that these requirements are complied with at all times.

These regulations will remain unchanged until the repeal of the *Sex Work Act 1994* in December 2023 (Stage Two), at which point these regulations will be repealed in full.