



**Vixen Collective**  
(Victoria's peer only sex worker organisation)



## **Information for the *Consultation on Decriminalising Sex Work in Victoria*:**

The Victorian government has committed to decriminalising sex work in Victoria. The government has presented a proposal of what this will look like, and are seeking feedback on the implementation of decriminalisation. The government has issued a **discussion paper** and **short survey** which outline the topics that they would like input into.

The discussion paper and survey address topics such as;

- offences and criminal penalties,
- public health,
- anti-discrimination protections,
- advertising and liquor licensing,
- planning controls.
- How the Victorian government should:
  - ensure positive outcomes for sex workers and the industry
  - promote understanding of the new laws
  - appropriately implement the decriminalisation of sex work

This is a significant opportunity to make sure the Victorian government meets its commitment to decriminalise sex work. While we welcome the government's commitment to decriminalisation, the current proposal falls short of this in some areas. Vixen Collective and Scarlet Alliance are advocating for the full decriminalisation of all sex work for all sex workers.

It is important that sex workers shape the decriminalisation process. The voices of sex workers must be centred, and our calls for the full decriminalisation of all forms of sex work must be heard. We acknowledge that the consultation time frame is very short and appreciate any contribution that you are able to make to the process. The more sex workers and allies that participate in this *Consultation*, the more likely we are to achieve a model that is the full decriminalisation of sex work.

The *Consultation on Decriminalising Sex Work in Victoria* (hereafter referred to as the *Consultation*) will likely attract many people's opinions, but as sex workers we know how these laws and regulations impact our work and our safety.

**The closing date to submit into the Consultation is the 27th of August 2021.**

# Decriminalisation is essential to our workplace rights, health and safety!

## Sex workers want full decriminalisation in Victoria!

This information pack is to assist people to have a say on the proposed model of decriminalisation.

It includes information on:

1. Where to locate the *Consultation*, the discussion paper and the short survey.
2. How to make your submission.
3. How to have your say as a sex worker, ally and allied stakeholder.
4. Problems with the current sex industry regulation in Victoria.
5. What is the full decriminalisation of sex work?
6. What the Victorian government is currently proposing
7. The 5 survey questions.
8. The discussion paper questions.
9. Further reading and reliable research.

There are two options for contributing to the *Consultation*. Firstly, there is the option **to answer 5 questions via a survey**. Secondly, there is the option to address some or all of the questions raised by the discussion paper in the form of **a written or audio submission**. This information pack provides assistance for both options.

**If you would like more information on *the Consultation* and its submissions process you can contact us on the details below:**

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## **1. Where to locate the *Consultation* and other reference materials for the submissions process:**

- General information about the *Consultation* and the Discussion Paper can be accessed [here](https://engage.vic.gov.au/sex-work-decriminalisation): <https://engage.vic.gov.au/sex-work-decriminalisation>.
- The link to the 5 question survey can be accessed [here](https://djs.syd1.qualtrics.com/jfe/form/SV_4YnbaqjteC1POzc): [https://djs.syd1.qualtrics.com/jfe/form/SV\\_4YnbaqjteC1POzc](https://djs.syd1.qualtrics.com/jfe/form/SV_4YnbaqjteC1POzc)

## **2. How to submit your submission**

Information on how to make a submission can be found on the [Consultation general information page](#). In short, you can submit by:

- Completing all or part of the [survey](#) or,
- Uploading a **written or audio submission** via [this link](#), or by emailing it to [SWD@justice.vic.gov.au](mailto:SWD@justice.vic.gov.au)
- Providing a **written submission via post** addressed to:
  - Sex Work Decriminalisation,  
Department of Justice and Community Safety  
GPO Box 4356  
Melbourne VIC 3001

## **3. Have your say as a community member/sex worker/business operator**

*\*A general note here is that you don't have to provide any personal information to make a submission to this Consultation.*

### As a Sex Worker

You may want to discuss how the current proposals will impact your work – it is important for the Victorian government to hear the real impact of the current laws and proposals from sex workers ourselves. You can identify as a sex worker without providing your personal or work details. Please contact [info@vixencollective.org](mailto:info@vixencollective.org) if you would like any further information on the *Consultation* or support with your submission.

### As an Ally or Allied Stakeholder

Support sex workers' right to health, safety, inclusion, justice, freedom from police and state violence, discriminatory laws and policies. Add your voice to the support for the full decriminalisation of sex work, sex workers, our workplaces, clients and third parties, and a *funded* peer only sex worker service for Victorian sex workers. Full decriminalisation is essential for sex workers' rights, health and safety.

#### **4. Problems with the current sex industry regulation in Victoria**

In Victoria, the current regulatory system for sex work is licensing. Licensing has created a two-tiered sex industry where a small percentage of sex workers and businesses can meet the onerous and harmful compliance requirements, while the majority cannot and are forced to operate outside of the legal framework where they are criminalised and targeted by police.

For sex workers who are forced to operate outside of the licensing system, there are significant barriers to accessing essential services, such as targeted health and support programs. For sex workers operating within these frameworks, accessing essential services can result in surveillance, discrimination, fines, or even deportation. Often it is those in the sex worker community who are already most at risk of state and police violence who are unable to work compliantly.

Licensing impinges on sex workers' safety, limits sex workers' choices over our work environment and exacerbates power imbalances between sex workers and sex industry owners and operators. In addition, when police are positioned as regulators and enforcers of the sex industry, sex workers are deterred from accessing justice as this can result in self-incrimination, surveillance or being shut down, fined, and even deported.

The Victorian licensing system means that sex workers must make choices about where, how, and with whom we work, based on the onerous requirements of the licensing system, rather than our occupational health and safety needs. The licensing system forces sex workers into contact with the police and courts, contributes to records with the state that may affect future work and life options (employment, housing, custody, etc) and serves no purpose except to further stigmatise a marginalised community.

##### **In summary, under the current licensing framework:**

- Police fulfil an enforcement role, and are the key regulators of both compliant and non compliant parts of the industry.
- Street-based sex work is criminalised. Street-based sex workers are subject to penalties, and heightened stigma and oppositional police contact and harrassment.
- Private sex workers must register with the Business Licensing Authority (BLA) and obtain a Sex Work Act (SWA) number. A historical register of sex workers' legal details is kept permanently.
- Private sex worker must get a local council permit and comply with onerous zoning requirements in order to work from home or their own premises. This is effectively impossible for almost all private sex workers, instead requiring them to go to other locations (such as clients' homes or hotel rooms) that they have reduced familiarity with, or control over.
- Escort agencies and brothels must comply with the licensing system to operate lawfully. Brothels must also comply with onerous zoning and planning requirements.
- Sex industry advertisements must comply with strict and specific regulations.
- Sex workers health and safer sex practices are singled out and mandated by law. Sex workers must undergo tri-monthly mandatory sexual health testing and sex workers with HIV are criminalised.

Throughout this consultation process, it is important that we keep advocating for the [full decriminalisation of sex work](#) in Victoria.

For further information on the current regulatory framework in Victoria, please see the info-kit that the Scarlet Alliance and Vixen Collective made for the initial [Review into Decriminalising Sex Work](#)

## 5. What is the full decriminalisation of sex work?

- The [full decriminalisation of sex work](#) is the removal of all sex work-specific criminal and licensing laws that apply only to sex workers, our workplaces, clients, and third parties. Criminal laws that apply to everyone are still enforced by police.
- Civil laws are implemented by government agencies and regulators, not the police. Civil laws protect people's health, safety, privacy, autonomy, human and industrial rights, and are meant to apply to everyone. Full decriminalisation gives sex workers access to workplace health and safety protections and civil law.
- Any criminalisation of street-based sex work is not the full decriminalisation of sex work.
- Decriminalisation means there are no specific laws that prohibit migrants and temporary visa holders from working in the sex industry. Migrant sex workers should have access to the full range of rights and protections available to local workers. Targeting and extra surveillance of migrant sex workers for undertaking sex work is not the full decriminalisation of sex work.
- Local planning laws, public health laws, advertising laws and liquor licensing laws must not be implemented in ways that discriminate against sex workers. This would undermine full decriminalisation.

## 6. What is the Victorian Government currently proposing?

The Victorian Government has committed to decriminalisation. They are intending to:

- Repeal the *Sex Work Act 1994*.
- Repeal public health offences related to mandatory sexual health testing, the criminalisation of sex workers living with HIV and the criminalisation of not using prophylactics. (eg. condoms).
- Amend the *Equal Opportunity Act 2010* to include anti-discrimination protections for sex workers.
- Amend planning controls, advertising and liquor licensing laws.

There are many positive aspects to these proposals. However, these proposals still remain broad and undefined so it is important to tell the government how they should implement them in a way that amounts to the full decriminalisation of sex work. There are also aspects of the government's proposals that **do not align with their commitment to decriminalise sex work**.

Your contributions to this process can help ensure that this positive progression for sex workers in Victoria benefits the entire sex work community and keeps the government accountable to their commitment to decriminalisation.

**If you are planning on making a brief submission, these are some of the key points you may like to point out.**

- The criminalisation of street-based sex work
  - The proposal to maintain the criminalisation of street-based sex workers if they are *'soliciting or loitering ... near or within view of a place of worship, school or other select locations frequented by children'* places street-based sex workers at risk of targeted and discriminatory police action and surveillance.

- **Retaining criminal offences that specifically target street-based sex workers does not meet the government’s commitment to decriminalisation and maintains the policing of street-based sex work.**
- Street-based sex workers’ safety, rights and ability to access essential services and implement critical safety and harm reduction strategies at work is severely undermined by criminalisation
  
- Implementing a *‘public health and infection control framework for the sex work industry focused on health promotion and harm reduction’*
  - The proposal to *‘introduce a new public health and infection control framework for the sex work industry focused on health promotion and harm reduction’* is concerning in its ambiguity. The proposed framework should not contain penalties or offences for breaching conditions, or any criminalisation of public health.
  - **Any regulatory or criminalising framework that continues to impose penalties and offences to sex workers especially within the context of public health is unnecessary, discriminatory and does not align with the government’s commitment to decriminalisation.**
  - Sex workers in Australia have lower rates of STIs and BBVs than the general population. This low rate is best maintained by peer-led outreach and community education programs, not by stigmatising government intervention and regulation.
  
- Discriminatory planning controls
  - The proposal that sex businesses can be subject to ‘additional planning restrictions which are proportionate and reasonable’, leaves scope for discrimination. **Any retention of discriminatory planning and zoning regulations undermine decriminalisation as they often lead to sex workers being relegated to industrial areas, which compromises our safety and wellbeing.**
  - Home-based sex work businesses should not be subject to restrictive permit requirements as this replicates a licensing framework.

## **7. The 5 survey questions**

Some points that you might like to address in these questions...

*How can the Victorian Government better work with and support the sex work industry to achieve better outcomes for sex workers and the industry?*

- Establishing a **funded peer sex worker organisation** to carry out peer delivered projects and outreach projects is essential to the successful transition to and implementation of decriminalisation, and to better outcomes for sex workers
  - **Victorian sex workers do not currently have access to a funded peer sex worker service.** This structural gap has created significant barriers to sex workers accessing appropriate and non-discriminatory services that are essential to our health and safety needs, and our occupational and human rights. These gaps are exacerbated for migrant sex workers and culturally and linguistically diverse sex workers, sex workers in regional areas, and trans and gender diverse sex workers.

- **Peer-delivered projects, health promotion and outreach services are best practice, evidence-based<sup>12</sup> approach to delivering services to meet the needs of sex workers.** Peer-run services have better access to our own communities, and are uniquely placed to understand the issues sex workers face because of our shared experience living and working as sex workers. Peer-run organisations are able to train, mentor, and pass on peer knowledge in a way that non peers cannot, due to their having no lived experience in our lives or work.
  - Both the National and Victorian HIV strategies<sup>34</sup> identify sex worker peer education as a key action area, emphasising the central role of peer education and peer sex worker organisations in best practice prevention, treatment and health promotion strategies.
  - **Vixen Collective, in coordination with Scarlet Alliance, should be funded and resourced to conduct a formal community needs analysis** for the purpose of establishing a best-practice funded sex worker service program for the Victorian sex worker community. This must include an ongoing secure health contract for core BBV and STI work, and funding for other core support work including regional services and CALD and migrant sex worker peer outreach.

*What can the Victorian Government do to promote understanding of the changes involved in the decriminalisation of sex work?*

- The government should work with the sex worker community, Vixen Collective and Scarlet Alliance to **ensure all relevant agencies involved in the regulation of sex work are educated about both the intent and implementation of decriminalisation.** This must include ongoing work to ensure police are informed about decriminalisation, and have awareness of their changed role under decriminalisation and awareness of the new legislative framework.
- Similarly, the government should work closely with sex workers and our organisations to communicate rights and responsibilities under decriminalisation to both sex workers and sex industry business owners, and promote understanding of the changes involved.

*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?*

- **Planning regulation needs to be non-discriminatory, fair, transparent and consistent. A consistent planning system should be appropriately applied to the diversity of scale and impact of sex industry businesses, just as it is to other businesses.**
- Any discriminatory and inconsistent planning restrictions on sex work businesses undermines the intention of decriminalisation, as this can result in businesses having to operate outside of the regulations, forming a two-tiered system similar to what currently exists in Victoria.

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<sup>1</sup> Kerrigan D, Kennedy CE, Morgan-Thomas R, et al. A community empowerment approach to the HIV response among sex workers: effectiveness, challenges, and considerations for implementation and scale-up. *Lancet*. 2015;385(9963):172-185. doi:10.1016/S0140-6736(14)60973-9

<sup>2</sup> World Health Organisation, 2013. Community Empowerment. Implementing Comprehensive HIV-STI Programs. [online] pp.4-5. Available at: <[https://www.who.int/hiv/pub/sti/swit\\_chpt1.pdf?ua=1](https://www.who.int/hiv/pub/sti/swit_chpt1.pdf?ua=1)> [Accessed 7 July 2020].

<sup>3</sup> Commonwealth Department of Health, (2018). *Eight National HIV Strategy 2018 - 2022*. [https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/\\$File/HIV-Eight-Nat-Strategy-2018-22.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-bbvs-1/$File/HIV-Eight-Nat-Strategy-2018-22.pdf) [Accessed 21 August, 2021]

<sup>4</sup> Victorian Department of Health and Human Services, (2017), *Victorian HIV strategy 2017–2020* <https://www2.health.vic.gov.au/about/publications/policiesandguidelines/victorian-hiv-strategy-2017-2020> [Accessed 21 August, 2021]

- To minimise discriminatory and inconsistent council practices, the Victorian government should amend the 'Victorian Planning Provisions' (VPP) to apply reasonable planning controls in a consistent, fair and non-discriminatory way, to give effect to and ensure consistency with the aims and provisions of decriminalisation legislation.

*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?*

- The full decriminalisation of sex work, including that of **all** street-based sex work, is essential to ensuring that sex workers can work safely and equally and that no sex worker is at risk of criminalisation. Any criminalisation of street-based sex work falls short of the government's commitment to decriminalisation.
- Repealing the current public health offences is essential. This includes repealing mandatory testing for sexually transmitted infections (STIs) and blood borne viruses, (BBVs) the criminalisation of unprotected sex and the criminalisation of sex workers who are HIV positive.
- Rates of STIs and BBVs are lower amongst sex workers than in the general community. Therefore, sex workers should not be subject to a specific '*public health and infection control framework*' as there is no reason for this and creates scope for discrimination and regulation. Also, '*infection control*' perpetuates the stigma that sex workers are more 'infectious' than the general community, which is an assumption not based in evidence. The government should instead fund a peer sex work organisation to conduct peer education and outreach which is the most effective and empowering model to achieve the best health and wellbeing outcomes for workers.
- Anti-discrimination law should be reformed to include '*sex work, sex worker and family members and associates of sex workers*' as protected attributes. The proposed reform of including '*profession, trade, occupation or calling*' as a protected attribute, does not adequately protect sex workers from discrimination. This is evidenced by the low rates of success in anti-discrimination complaints brought by sex workers in ACT, where '*profession, trade, occupation or calling*' is an attribute.
- Advertising and liquor licensing regulations should apply equally to sex work as they do for other industries. There is no need to create specific restrictions and any discriminatory regulations will undermine the intention of decriminalisation.

*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?*

- **Current and historical registration records of sex workers held by the BLA must be destroyed, to ensure sex workers' privacy and freedom from discrimination**, and support the intent and implementation of decriminalisation. The SWA requires private sex workers to register our legal details and identification with the Business Licensing Authority ("exempt sex work service provider registration"). Under decriminalisation this requirement will not exist, and there would be no justification to retain these records.
- **New workplace health and safety standards and guidelines must be developed post-decriminalisation, in partnership with Vixen Collective and Scarlet Alliance and the sex worker community.** WHS guidelines, and the strategies to implement them, must be developed under decriminalisation, in direct response to the new environment decriminalisation produces for sex workers and workplaces. Implementing suitable WHS strategies for sex workers requires guidelines that are relevant to and appropriate for our

- workplaces and our health and safety needs. To be effective, sex workers' expert knowledge of our WHS needs is essential to the process of developing of new guidelines.
- The government should prioritise partnerships with Vixen Collective, Victoria's recognised peer run sex worker organisation, and Scarlet Alliance to **ensure ongoing consultation with sex workers and ensure an effective policy-feedback loop between government and sex workers throughout the decriminalisation process**. This includes working with us to ensure access to pathways and mechanisms relating to anti-discrimination, industrial protections, and WHS, and enactment of active initiatives around stigma and discrimination.

## **8. The Discussion Paper Questions**

If you plan to submit a written or audio submission that addresses the questions raised by the discussion paper please note that you can also answer the 5 questions discussed above as well.

General topics raised that you may want to address:

### Offences and criminal penalties

**Retaining any criminal offences that specifically target street-based sex workers does not meet the government's commitment to decriminalisation.** Criminalisation clearly undermines the government's intent to ensure that sex workers are treated as workers, as well as their intent to the improve safety and wellbeing of **ALL** sex workers.

The proposal to maintain the criminalisation of street-based sex workers if they are '*soliciting or loitering... near or within view of a place of worship, school or other select locations frequented by children*' places street-based sex workers at risk of targeted and discriminatory police action and surveillance. **The government acknowledges that criminalising street-based sex work is detrimental to our health and wellbeing yet simultaneously proposes to criminalise street-based sex work through this restriction.**

Regulations specifically criminalising the movement of street-based sex workers are discriminatory and stigmatising. Such regulations create barriers to workers accessing justice, health and social services. Retaining any criminalisation of street-based sex work will perpetuate significant barriers for street-based sex workers to report crime or exploitation to the police, in fear that reporting will, in turn, result in charges being laid against them.

The terminology of 'soliciting and loitering' is stigmatising and implies that the community and especially children, are 'at risk' of witnessing street-based sex work. Street-based sex workers do not actively seek to carry out their work near places of worship or children. This is a fear based on moral panic and not on evidence. Street-based sex workers aim to perform their work in locations which are most familiar to them, safe and accessible to clients and peers and which are discrete. Schools, churches and other such locations are not desirable to street-based workers. Further, any planning and council regulations that relegate street-based sex work to specific areas are discriminatory and stigmatising and do NOT align with the intent of full decriminalisation.

Any process of decriminalisation must not leave any sex workers criminalised, stigmatised and subject to police enforcement and targeting.

### Public health

Sex workers are often incorrectly presumed to be a public health risk and '*vectors of disease*'. This is a stigma-based misconception that is not supported by evidence. In reality, evidence indicates that sex workers have rates of blood borne viruses (BBVs) and sexually transmitted infections (STIs) that

are equal to, or lower than, the general population. We support the Victorian government's commitment to repealing the public health offences contained within the *Sex Work Act 1994* which force sex workers to undergo mandatory sexual health testing, criminalise sex workers living with HIV and criminalise working without prophylactics.

The proposal to develop a '*public health and infection control framework*' that specifically applies to the sex industry needs to be further explained by the government. Public health should be regulated under appropriate mechanisms. PPE such as condoms and dams should be regulated through workplace health and safety provisions as they are for other industries and these guidelines should be developed in partnership with Vixen Collective and the Scarlet Alliance. **Under no circumstances should any public health aims for sex workers involve police regulation and criminalisation.** This is counter-productive, replicates a licensing system and is incompatible with decriminalisation. As evidenced by the low rates of STIs and BBVs amongst sex workers in Australia, there is no reason that the sex industry needs a specific framework that is different from other industries.

Further, the labelling of this proposed framework as 'public health and infection control' perpetuates the stigma that sex workers need to be placed under more scrutiny than the general population and implies that sex workers are carriers of 'infectious disease'.

To support the health and wellbeing of sex workers the government should instead provide funding for peer sex worker organisations, as peer education and peer-led outreach services achieve the best health outcomes for sex workers.

#### Anti-discrimination protections

To effectively support the safety and wellbeing of sex workers, we need anti-discrimination protections to be implemented alongside the decriminalisation process. This is due to the increased stigma and discrimination that sex workers experience regardless of whether our work is criminalised, licensed or decriminalised. Stigma against sex workers has been identified as a negative health determinant that affects the mental and physical health of workers,<sup>5</sup> our ability to access non-judgemental health care<sup>6</sup> and our access to basic needs like housing, financial services and legal support. We expect to experience stigma when interacting with the legal system, law enforcement, immigration and other government services such as welfare, education and health care. The anticipation of this stigma and the lack of anti-discrimination protections can deter sex workers from accessing these basic services, including deterrence from reporting crimes committed against us and accessing justice in cases where our labour rights are breached. Therefore, we welcome the government's commitment to reforming Victoria's anti-discrimination protections under the *Equal Opportunity Act 2010*.

**However, to ensure that sex workers are adequately protected, we call for the inclusion of "sex work" and "sex worker" as protected attributes. We advocate for coverage for past and present sex workers, as well as family members and associates of sex workers.**

The proposed reform which specifies "profession, trade, occupation or calling" as a protected attribute, is not adequate to protect sex workers from discrimination. This is evidenced by the low rates of success in anti-discrimination complaints brought by sex workers in ACT, where '*profession, trade, occupation or calling*' is an attribute. To reduce these foreseeable gaps in coverage for sex

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<sup>5</sup> Carla Treolar et al., 'Rethinking the Relationship between Sex Work, Mental Health and Stigma: A Qualitative Study of Sex Workers in Australia' (2021) 268 *Social Science & Medicine* 113468.

<sup>6</sup> Cecilia Benoit et al., 'Prostitution Stigma and Its Effect on the Working Conditions, Personal Lives, and Health of Sex Workers' (2018) 55(4-5) *The Journal of Sex Research* 457, 458.

workers and enhance the impact of anti-discrimination protection, “sex work” and “sex worker” must be included as main attributes alongside the ‘*profession, trade, occupation or calling*’ category.

Explicitly naming “sex work” and “sex worker” as main attributes ensures that sex workers will be fully covered by anti-discrimination legislation. This will ensure that workers are covered regardless of the form of sex work they engage in, whether the person making the complaint identifies as a sex worker, or if they are operating in the regulated or unregulated sex industry. It will also allow for protections for sex workers against discrimination and stigma regardless of regulatory, political and judicial environments and viewpoints around sex work.

### Advertising

Sex workers should not face sex work-specific criminal or other regulation on advertising. In Australia, there is already a national standard that applies to all commercial advertising. Adult industry websites already have age limits.

For sex workers, advertising is an essential component of our workplace health and safety strategies. Restrictions on advertising are not based in evidence, nor do they have any demonstrable positive impacts on sex worker occupational health and safety. If anything, these restrictions represent a barrier to proper negotiation of services with prospective clients. Like any workers, we must be able to advertise our services clearly and negotiate directly with clients in advance of a booking, without fear of fines or police entrapment, and without discriminatory higher advertising premiums.

Sex work businesses must also be able to advertise employment opportunities with transparency and clarity. Sex workers also need to be able to advertise safely and transparently for coworkers.

### Liquor licensing

Sex work businesses that wish to sell alcohol should be able to apply for liquor licences, subject to the standard liquor licensing framework and responsible service of alcohol under the *Liquor Control Reform Act 1998* that applies to other kind of businesses.

## **Specific ‘issues for consideration’ relating to planning controls**

*\*A note on the terminology used in the discussion paper\**

“Commercial sex work businesses”: The discussion paper uses the term “commercial sex work”. This is a redundant repetition. The UNAIDS Terminology Guidelines states: ‘*The words “commercial” and “work” imply the same thing so one or the other can be used but not both together.*’<sup>7</sup>

General points you may consider when addressing this section:

- **It is important that Victorian government implement planning controls that are consistent and non-discriminatory towards sex work businesses.** In NSW, local councils apply their own planning restrictions to sex work businesses. This has resulted in unfair, inconsistent and discriminatory practices, often relegating sex work businesses to industrial zones.<sup>8</sup> Any restrictive or discriminatory planning controls deeply undermine the beneficial intent of

<sup>7</sup> UNAIDS (2015) ‘UNAIDS Terminology Guidelines’

[https://www.unaids.org/sites/default/files/media\\_asset/2015\\_terminology\\_guidelines\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/2015_terminology_guidelines_en.pdf) accessed 21 August 2021

<sup>8</sup> Prior, P., ‘Not in my neighbourhood: Home businesses (sexual services) and council responses’ (2003) 9 *LGLJ* 10, pg. 13.

decriminalisation. The NSW Sex Services Premises Planning Advisory Panel has highlighted that 'establishing planning controls which are reasonable (rather than unnecessarily restrictive) is likely to result in a high proportion of sex service premises complying with council requirements, with corresponding benefits to council operations, the local community and health service providers'.<sup>9</sup>

- The Victorian government should amend the 'Victorian Planning Provisions' (VPP) to apply reasonable planning controls in a consistent, fair and non-discriminatory way. Clause 53.03 of the VPP<sup>10</sup> will be made redundant by repeal of the SWA. The VPP should be amended to give effect to and ensure consistency with the aims and provisions of decriminalisation legislation. Sex work businesses must be treated the same way as other comparable businesses and land uses, subject to equitable standard planning and land use requirements.
- Treating sex industry businesses as legitimate businesses and applying appropriate planning provisions has a number of tangible positive effects for sex workers and the community. Implementing equitable and fair local planning provisions that are consistently applied encourages compliance and improves the health, safety and rights of sex workers.
- **It is integral that planning regulations do not relegate sex worker businesses to industrial areas through discriminatory separation distance policies and zoning regulations.** Laws, licensing or zoning that force sex work into industrial areas are bad for sex worker's safety.
- Sex workers deliberately choose work locations based on privacy, access to essential services, public facilities including public transport, access to clients, visibility, lighting and safety. It is important that planning controls do not form a barrier to our safety strategies.
- Opposition to sex work businesses originates from the stigma-informed presumption that they '*encourage a broad range of negative effects such as immorality, nuisance, antisocial behaviour and criminality*'<sup>11</sup>. This stigma is not based in evidence and results in sex worker premises' being '*spatially and socially marginalised*'<sup>12</sup>. **Evidence from NSW shows that sex work businesses have a neutral or positive effect on neighbourhoods.**<sup>13</sup>
- Creating another two-tiered system of sex work within planning law is counterproductive and decreases the safety of sex workers. **Using police, licensing or zoning to force sex workers into specific locations is not full decriminalisation.**

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<sup>9</sup> Sex Services Premises Planning Advisory Panel (2004). Sex services premises: planning guidelines. NSW: NSW Department of Planning. Pg ii.

<sup>10</sup>[https://planning-schemes.api.delwp.vic.gov.au/schemes/vpps/53\\_03.pdf?\\_ga=2.54470248.1780245888.1629349587-1771122727.1626157653](https://planning-schemes.api.delwp.vic.gov.au/schemes/vpps/53_03.pdf?_ga=2.54470248.1780245888.1629349587-1771122727.1626157653)

<sup>11</sup> Prior, J. & Crofts, P. (2012) 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use', *New Zealand Geographer* 68, 130–140 pg. 131

<sup>12</sup> Ibid.

<sup>13</sup> Prior and Crofts, 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use' (2012) 68 *New Zealand Geographer* 130.

### **Separation distances**

#### **Questions regarding “commercial” sex work businesses:**

*Should commercial sex work businesses be separated from sensitive land uses (for example, schools, childcare, kindergarten, hospitals, residential and cultural activities)?*

*What should be the appropriate separation distances (if any) between commercial sex work businesses and sensitive land uses?*

*What should be the appropriate separation distances (if any) between commercial sex work businesses and residential dwellings?*

- As proposed by the discussion paper, there should be no separation distances between sex work businesses, sensitive land uses and residential dwellings.
- Research conducted in NSW suggests that sex work businesses have a neutral or positive effect on neighbourhoods<sup>14</sup> and that residents believe that other local businesses have similar amenity impacts<sup>15</sup>. Research conducted in 2011 illustrates that of 400 residents living in close proximity to commercial sex services in City of Sydney and Parramatta, 43.1% were unaware they lived within 400m, and of those who did know, 48.2% believed the business had no overall impact in the local area, and 24.1% rated it positively.<sup>16</sup>
- The perception of how sex work businesses may impact an area is not proportionate to the amenity impact that they actually have. It is important that the Victorian government takes a consistent, non-discriminatory and evidence-based approach to implementing planning regulations for sex work businesses. Regulations should be applied based on the size and amenity impact of each proposed sex work business, rather than applying blanket separation distances.
- Enforcing discriminatory separation distances would limit where sex work premises can legally operate which may ultimately lead to businesses being relegated to industrial areas. This greatly decreases sex workers safety, makes our workplaces difficult to access and increases isolation.
- Any implementation of discriminatory separation distancing regulations is not the full decriminalisation of sex work.

#### **Questions regarding home-based sex work businesses:**

*Should home-based sex work businesses be separated from other sensitive land uses?*

*What should be the appropriate separation distances (if any) for home-based sex work businesses and sensitive land uses?*

- As proposed by the discussion paper, there should be no separation distances between home-based sex work businesses, sensitive land uses and residential dwellings.
- In NSW, a significant proportion of local councils have imposed discriminatory locational restrictions on home-based and home sex work businesses which these businesses are unable to meet.<sup>17</sup> Sex workers choose to operate home-based businesses because of the familiarity, safety and independence of the working environment. If restrictive locational regulations are implemented it forces us to choose between working in a way that we feel

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<sup>14</sup> Prior and Crofts, 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use' (2012) 68 *New Zealand Geographer* 130.

<sup>15</sup> NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 29.

<sup>16</sup> Prior, P. & Crofts, J., 'Effects of sex premises on neighbourhoods: Residents, local planning and the geographies of a controversial land use' (2012) 68 *New Zealand Geographer* 130, cited in NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 29.

<sup>17</sup> Prior, P., 'Not in my neighbourhood: Home businesses (sexual services) and council responses' (2003) 9 *LGLJ* 10, pg. 10.

comfortable and safe and working legally. Therefore, it is important that the Victorian government does not impose discriminatory or arbitrary restrictions on home-based businesses based on their proximity to ‘sensitive land uses’.

### **“Commercial” sex work businesses**

*What is the appropriate size limit (for example, floor area, number of rooms or sex workers) of a commercial sex work business (if any)? Is there a continued need to limit the number of rooms in a commercial sex work business?*

- Sex work businesses should be subject to the same size limitation considerations as other businesses. It is unnecessary to impose an ‘appropriate size limit’ that applies only to sex work businesses. Research from NSW suggests that sex work businesses tend to be small-scale anyway, having on average 7 workers in total, who have shifts at different times of the day.<sup>18</sup>

*Should there be different planning controls for the location of commercial sex work business in different zones?*

- We agree with the proposal that the Victoria Planning Provisions be amended to allow sex work businesses to operate in commercial and residential zones, subject to appropriate requirements.
- Industrial zones are inappropriate for sex work premises as they are often isolated, minimally populated at night, have poor lighting, minimal public surveillance and ‘little to no public transport’.<sup>19</sup> Buildings in industrial areas are also less likely to be suitable for use as sex work businesses, often requiring significant financial outlay in order to meet work health and safety standards and accessibility requirements.<sup>20</sup> Relegating sex workers to isolated zones and disincentivising compliance with work health and safety requirements forms an unsafe working environment for sex workers, compromising our safety and workplace conditions.
- There is no evidence to support separating sex industry businesses or sex workers to ‘18+ precinct areas’.<sup>21</sup>
- The zoning of sex industry businesses is incompatible with full decriminalisation and there is also no evidence to support the value of segregating sex industry businesses or sex workers to restricted areas.

*Should the number of sex work businesses in a given location be a consideration when determining permit applications?*

- No. There is no evidence to support specific consideration of numbers of sex work businesses, or limits on the numbers of sex work businesses in a given area. As noted above, perceptions or anxieties about how sex work businesses may impact an area is not proportionate to the amenity impact that they actually have.

*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?*

- Any permit requirements must be applied to sex work businesses the same as other businesses. This should be done in a way that is consistent, transparent and non-discriminatory.

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<sup>18</sup> NSW Government, Better Regulation Office, *Issues Paper: Regulation of Brothels in NSW*, September 2012, 29.

<sup>19</sup> Prior, P., ‘Not in my neighbourhood: Home businesses (sexual services) and council responses’ (2003) 9 *LGLJ* 10, pg. 15.

<sup>20</sup> Ibid.

<sup>21</sup> Scarlet Alliance (2021) ‘The Full Decriminalisation of Sex Work in Australia’

[https://scarletalliance.org.au/library/briefing\\_paper\\_full\\_decrim](https://scarletalliance.org.au/library/briefing_paper_full_decrim) [Accessed 21 August, 2021]

### **Home-based businesses**

*Should home-based sex work businesses be able to operate without a permit subject to the same planning requirements as other home-based business?*

- **It is unnecessary for councils to require permit applications for home-based sex work businesses.** The *NSW Sex Services Premises Planning Guidelines* notes that there are ‘no known advantages of councils requiring a permit or development consent application from home-based sex workers.’<sup>22</sup> The ‘*Guidelines*’ do outline the following **significant disadvantages** that arise when home occupation sex workers are forced to apply for council approval:
  - ‘Sex workers are unlikely to comply as a **permit reveals sex workers’ addresses, making them vulnerable to abuse and violence from the public and coercion from operators of larger premises.** As a result, home occupations may continue to exist illegally within council areas, exposing sex workers to criminalisation and isolating us from sex worker peer support and health services.’<sup>23</sup>
  - ‘**It is inequitable as there is no evidence that home occupation sex work has any more impact than other home occupations** e.g. an architect working from home, accountant, tax agent, photographer etc.’<sup>24</sup>
  - ‘**The low, or negligible, impact does not warrant the need for a permit,** which involves considerable cost and time and raises the possibility of neighbour objections.’<sup>25</sup>
- **Sex workers have a fraught history with stigmatising and discriminatory licensing and registration requirements in Victoria and discrimination from councils .** This forms a major barrier to compliance for sex workers who can’t apply for permits due to privacy and safety concerns. We have specific privacy and safety concerns connected to stigma that will not evaporate with decriminalisation. Therefore, it is not reasonable to expect people to identify themselves as a sex worker to local councils.
- Home-based sex work businesses also generally do not have the same amenity impact as other businesses; they are often discreet and private and have a minimal impact on the neighbourhood comparatively to other home-based businesses.<sup>26</sup>

*What is the appropriate number of workers in a home-based sex work business (who reside in the dwelling or otherwise)? Is there a need to limit the number of rooms used for sex work in a home-based business?*

- **It is not necessary to place restrictions on the ‘appropriate number workers’ or limit the number of rooms used for sex work in any home-based or home business for sex workers who are working together in a cooperative and not in a management or employment relationship to each other.** A home-based business setting is a common way for sex workers to work in a cooperative structure, sharing the costs of running a business and be able to implement safe work strategies.

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<sup>22</sup> Sex Services Premises Planning Advisory Panel (2004). Sex services premises: planning guidelines. NSW: NSW Department of Planning. Pg 54.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

- In New Zealand, home-based businesses can operate with up to 4 workers. Evidence shows that this hasn't created any issues and has improved home-based businesses being able to operate legally.

*What other considerations should there be for councils considering permit applications for home-based sex work businesses?*

- As outlined above, home-based sex work businesses should not have to apply for a permit.

### **Signage**

*Should there be specific requirements restricting signage associated with sex work businesses?*

- Sex work businesses should not be subject to more restrictive signage requirements than other industries.

## **9. Further reading and reliable research**

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