

# Amendment VC217 Decriminalising sex work

## Planning Advisory Note 79

June 2022

This advisory note explains changes to be introduced by Amendment VC217 to the *Victoria Planning Provisions* (VPP) and all planning schemes which will come into operation on **1 December 2023**.

It should be read in conjunction with the Amendment VC217 Explanatory Report.

### **Why is sex work being decriminalised?**

Sex work is being decriminalised to achieve better public health and human rights outcomes.

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

### **Why are the VPP and all planning schemes changing?**

The VPP and all planning schemes are changing to implement the decriminalisation of sex work.

The *Sex Work Decriminalisation Act 2022* (Sex Work Decriminalisation Act) will repeal the existing *Sex Work Act 1994* (Sex Work Act).

Planning schemes and Part 4 of the Sex Work Act currently operate together to regulate the use and development of land for a brothel. Part 4 of the Sex Work Act contains restrictions on the granting of a planning permit for a brothel.

All restrictions in Part 4 of the Sex Work Act on where a brothel can be established will be repealed by the Sex Work Decriminalisation Act. These controls will not be re-enacted in the VPP and planning schemes.

Brothels will become known as a *sex services premises* and will be treated in the same way as other businesses that provide personal services.



The VPP and all planning schemes will be amended to:

- delete clause 53.03 (Brothels) which links planning decision making to the Sex Work Act
- delete the land use term *brothel*
- insert the land use 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
- allow sex work to be carried out as a home based business.

**When does Amendment VC217 come into operation?**

Amendment VC217 will come into operation at the same time as the repeal of the Sex Work Act in December 2023.

**What is a sex services premises?**

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

A new term *sex services premises* will be included in clause 73 (Meaning of terms) to describe land used for sex work as follows:

*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.*

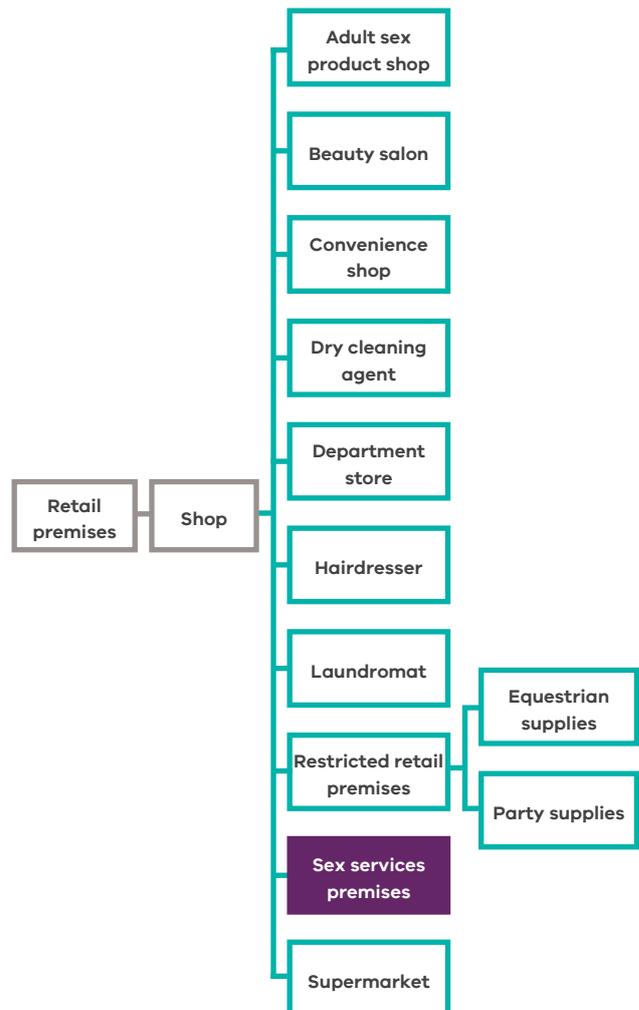
The term *sex services premises* applies to the provision of in-person sexual services, not to live entertainment or sex on premises venues such as bathhouses, swingers venues, or pornography or camming studios where sexual services are not provided in-person by a worker. These types of activities are specifically excluded from the definition.

**How will the term sex services premises be nested with other land uses?**

A reference to shop or retail premises in a planning scheme will include *sex services premises*, unless it is specifically excluded.

The revised nesting diagram for clause 73.04 (Nesting diagrams) is shown in **Figure 1**.

*Figure 1: Revised nesting diagram for clause 73.04.*





### Where will a sex services premises be able to locate?

Where the use of land for a *shop* is permitted, a *sex services premises* will also be permitted and will be subject to the same conditions and requirements that apply to a *shop* in all zones.

A *sex services premises* will be allowed with a planning permit in the Industrial 1 Zone, Industrial 2 Zone and Port Zone (where a *shop* is a prohibited use). This recognises that a brothel was a permitted use in these zones before the reform and that licensed brothels already operate in those zones.

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

In special purpose zones, a *sex services premises* will be treated in the same way as a *shop*.

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*.

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. This means there will be no restrictions in relation to:

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

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 a *sex services premises* will be a Section 1, 2 or 3 use in each zone under Amendment VC217. 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 a 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	
• inside metropolitan Melbourne	Section 1
• outside metropolitan Melbourne	Section 1* / 2
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, Amendment VC217 amends schedules to special purpose zones to delete references to a brothel.



### **Will a planning permit be required for the development of a sex services premises?**

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* (development of land includes the construction of a building or construction or carrying out of works).

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

An application for a *sex services premises* is assessed in the same way as an application for a *shop*.

Before deciding on an application for a *sex services premises*, the responsible authority must consider relevant matters in clause 65 (Decision Guidelines) including:

- the relevant state, regional and local strategic objectives contained in the Planning Policy Framework (PPF)
- the purpose and requirements of the zone and schedule
- the purpose and requirements of any overlay and schedule
- the relevant particular provisions
- the relevant general provisions
- any requirements of the *Planning and Environment Act 1987*, including section 60
- any objections or other submissions it has received.

### **Will there be any specific decision guidelines for a sex services premises?**

There will be no specific decision guidelines in the VPP for a *sex services premises*.

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 apply to a *sex services premises*.

The responsible authority must decide whether the proposal will have acceptable outcomes, having regard to the relevant provisions of the planning scheme.

### **What will the car parking requirements be for a sex services premises?**

The car parking requirements specified in clause 52.06 (Car parking) of the planning scheme for a *shop* will also apply to a *sex service premises*.

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, the Activity Centre Zone and the reduced parking rate for land in the Principal Public Transport Network Area continue to apply.

### **What will the sign requirements be for a sex services premises?**

The sign requirements specified in clause 52.05 (Signs) of the planning scheme for a *shop* will also apply to a *sex services premises*.

There are no specific requirements in the planning scheme for signs associated with sex work.

Importantly, the content of signs is not regulated by the planning scheme. This is regulated through other legislation such as the *Classification (Publications, Films and Computer Games) Act 1995* (Cth).

### **What requirements will apply to the sale and consumption of liquor for a sex services premises?**

The liquor requirements under clause 52.27 (Licensed premises) of the planning scheme will apply, in addition to the *Liquor Control Reform Act 1998*.

### **Will sex work be able 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. A home based business must comply with the requirements of clause 52.11 (Home based business).

The home based business requirements do not apply to other forms of accommodation such as a rooming house or a residential building.

### **Will there be any sign or car parking requirements for home based sex work?**

The sign and car parking requirements in clause 52.11 (and clauses 52.05 and 52.06) of the planning scheme for a home based business will apply to a home based sex work business.



### **How will residential amenity be maintained near home based businesses?**

It is the responsibility of the owner and occupier to ensure that a home based business meets all the requirements of clause 52.11-1. Clause 52.11-1 requires that a home based business must not adversely affect the amenity of the area.

If neighbours believe the home based business adversely affects the amenity of the area, they can report the breach of the planning scheme to the relevant municipal council.

### **How will adverse amenity impacts be assessed?**

There are no new requirements or controls for the assessment of amenity impacts.

Responsible authorities will continue to assess adverse amenity impacts in the same way as any other home based business.

### **How will any breaches of the planning scheme be enforced?**

There are no new enforcement requirements for a *sex services premises*. Responsible authorities will continue to administer and enforce planning schemes under the provisions of the *Planning and Environment Act 1987*.

### **Will the Planning Policy Framework be updated?**

The Planning Policy Framework will be updated at clause 17.02-1S (Business) to include policy that:

- supports establishing *sex services premises* in commercial and mixed-use areas
- ensures that planning for the use and development of *sex services premises* and home based businesses reduces discrimination and harm to sex workers.

### **Can a local planning policy be introduced for sex services premises and/or sex work?**

A local planning policy helps to implement state policy. It must not assume the role of state policy or take on a broader mandate.

Local planning policies about a *sex services premises* and/or sex work must be consistent with clause 17.02-1S, Amendment VC217 and the Sex Work Decriminalisation Act by not treating a *sex services premises* differently to any other *shop* or a sex work home based business differently from any other home based business.

A planning authority will not be authorised to prepare a planning scheme amendment that seeks to regulate the use and development of land for a *sex services premises* in a way that is different to the use and development of land for a *shop*.

### **What will happen to local planning scheme provisions and policies?**

Local provisions of planning schemes must be consistent with Amendment VC217 and the decriminalisation of sex work. Amendment VC217 will update local provisions to be consistent with the decriminalisation of sex work.

Section 12B of the *Planning and Environment Act 1987* requires a planning authority to regularly review its planning scheme. As part of future reviews and planning scheme amendments, the Municipal Planning Strategy and local planning policies must be consistent with clause 17.02-1S, Amendment VC217 and the decriminalisation of sex work.

### **What about other matters?**

If you have any questions about street-based sex work, child welfare, local laws or content of signs please refer to the Department of Justice and Community Safety website [vic.gov.au/review-make-recommendations-decriminalisation-sex-work](https://vic.gov.au/review-make-recommendations-decriminalisation-sex-work).

### **Further information**

For questions about Amendment VC217, contact the Department of Environment, Land, Water and Planning by email to [planning.systems@delwp.vic.gov.au](mailto:planning.systems@delwp.vic.gov.au).



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