

27 August 2021

MAV Submission to the Department of Justice and Community Safety

Via email: swd@justice.vic.gov.au

Dear Sir/Madam

Decriminalising sex work in Victoria

The Municipal Association of Victoria is responding to the high-level issues as outlined in the sex work decriminalisation discussion paper.

Councils generally welcome the intention of the Victorian Government to address the health and safety concerns of people engaged in sex work and consideration of its decriminalisation.

Our response is based on councils' advice to our submission to the Sex Work Decriminalisation Review which has led to these proposed legislative changes and the forums held this week. There has not been sufficient time or detail provided to seek informed views from our sector.

We think this reform, if done well, can significantly change the lives of people currently vulnerable to exploitation and stigma. The compressed consultation, lack of detail on evidence drawn upon to frame the changes, and regulatory frameworks in planning and public health to be developed sometime in the future all lead to limiting local government support and raises concerns of the resourcing impact on councils.

We note that feedback from the review commissioned in 2019 has not been provided, including the responses from state agencies such as Victoria Police, WorkSafe, local government and other agencies which will be tasked with implementing the reforms.

The lack of detail on implementation can lead to confusion amongst stakeholders and potential public backlash based on ill-informed reactions to some of the broad proposals.

We urge that any legislative changes or additional frameworks for licencing, regulation or planning allow for detailed and considered consultation processes with local government.

Consultation and Policy Goals for Sex Work Decriminalisation

We are surprised and deeply disappointed in the limited amount of time Victoria's 79 councils and the MAV have been provided with to respond to the proposed changes. The consultation meetings with council CEOs and Mayors held in the two days before consultation closed, with only a short consultation period of little more than a week prior. There was no advice or indication provided directly to the MAV or councils that the discussion paper was available until this engagement commenced.

The proposal to enable sex work to be available in a variety of locations, without clear indications of where and what frameworks will be in place, is particularly concerning given the scope, scale and impact for all local streets, residential areas and precincts across the state.

We do not have line of sight to the potential public health regulatory framework that we understand is being developed. We would suggest that the intimate nature and public health implications of sex work requires an appropriate level of public health regulation and monitoring. This will need to be resourced via statutory mechanisms. Councils will be interested to hear about the proposed roles of the Department of Health and Consumer Affairs in this regard.

Enforcement Activities and Resourcing

The risk of not having a state-wide regulatory framework for the sex work industry is that individual councils may take differing approaches. This has the potential for inconsistent outcomes based on levels of resourcing and local engagement. Planning for, regulating, and monitoring of a decriminalised sex work industry is a complex and sensitive space.

The Victorian Government needs to decide how it will protect vulnerable workers in residential settings. There are no indications provided in the available information any role for WorkSafe. We anticipate they will need to respond to issues arising from a new class of workplace that will be generated through the decriminalisation of the sex work industry and the removal of current controls.

The role of the Departments of Health and Fairness, Families and Housing, and Justice and Community Safety (DH, DFFH and DJCS), including Consumer Affairs and the Victoria Police, also need to be identified and communicated to councils and the broader community. The responsibility cannot simply be left to council environmental health officers and/or local laws officers who are already at capacity responding to local public health and other statutory needs generated by state legislation. Any public education role councils may be required to undertake with their communities also needs to be carefully considered.

We are concerned that responses to community complaints may be more pronounced in rural and regional areas. Metropolitan councils have also immediately identified that their complaint load may multiply exponentially, and that their EHOs are already stretched due to the increasing range of health and safety impacts councils must manage.

Planning considerations

Along with health officers, council planners manage a very demanding workload. Any changes to the Victorian Planning Provisions (VPPs) introduced by the Victorian Government must consider this. The new provisions must set a clear baseline for councils to decide on new applications for sex work premises. This in turn will give clarity and consistency in their application to the community and proponents of new sex work premises.

Councils will need to consider the planning and amenity impacts of sex work premises within residential areas and commercial precincts more than they have previously. While it is not the responsibility of the planning system to regulate safety and crime issues, it does seek to control amenity expectations through other means such as restrictions on noise, hours of operation, location and design. The reforms will need to express amenity expectations which councils will find enforceable and will be supported by the community.

Home-based sex work is an area of great concern. The impact of after-hours visitations on community amenity and potential for inherently unsafe and isolated environments for sex workers. This may be signalling potentially unacceptable risks to workers, their families, neighbours and the wider community.

Councils will similarly have a role in responding to liquor licence applications in most categories and the proposal for commercial and potentially home-based sex work businesses to apply for liquor licences will also impact councils and their communities and should be subject to further consultation.

Council planning departments will require support and resources to manage this change to ensure timely and fair decision making. This must include referral contacts within the Department of Justice and Community Safety (DJCS), or where to point community members and sex work premises proponents for more information. The more information is provided to planners, the better they will be able to make fair and balanced decisions in line with industry and community expectations. Planning Practise Note guidance must therefore form part of the package of reforms and be released in a timely manner to coincide with any changes to the Victoria Planning Provisions.

Funding to councils is also required for transition and permit fees also enabled for ongoing requirements where these are necessary. Without these tools and resources there will be chaotic implementation at best.

Despite the importance of this reform to the sex work industry and all Victorians, the limited consultation risks this major reform faltering because of poor implementation and failure to engage with councils and communities on the real-world impact on community health, safety and amenity.

We seek the opportunity for councils to consider and respond to an Exposure Draft Bill before legislation is introduced into Parliament. Without orderly development of this legislation and its accompanying implementation plan, this important reform risks serious consequences for both the sex work industry, businesses and the broader community.

We look forward to your consideration of the issues raised in this brief submission for stronger engagement with the sector in all aspects of implementation of this significant social policy reform

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Thompson', with a stylized flourish at the end.

KERRY THOMPSON
Chief Executive Officer