

**1.2 MONASH PLANNING SCHEME  
PLANNING SCHEME CHANGES TO SUPPORT THE DECRIMINALISATION OF  
SEX WORK (AMENDMENT VC217)**

Responsible Director: Peter Panagakos

**RECOMMENDATION**

*That Council note:*

1. *In March 2022, the Victorian Parliament passed the Sex Work Decriminalisation Act 2022 which will repeal the Sex Work Act 1994 and terms in other legislation, including, 'brothel', 'sex work' and 'sexual services', and introduces a new defined land use term 'sex services premises', to replace the land use term 'brothel'.*
2. *The first stage of the decriminalisation implementation commenced in May 2022 which involved removing offences and penalties for individuals participating in the act of consensual sex work in most circumstances, reviewing and amending advertising controls, repealing the exempt small owner operator register and introducing anti-discrimination protections for sex workers.*
3. *The next stage proposes changes to all Planning Schemes Across Victoria, including the Monash Planning Scheme, through the introduction of Amendment VC217 which was gazetted on 23 June 2022 and will come into operation on 1 December 2023 and implements the decriminalisation of sex work in Victoria.*
4. *The stated purpose of the changes made to the planning scheme under Amendment VC217 is part of the state government's plan for decriminalisation of sex work in Victoria with the objective to: improve the safety of sex workers, reduce the stigma around sex work and address discrimination against sex workers.*
5. *That Amendment VC217 was a state-wide planning scheme amendment that was not exhibited, and no panel hearing was held, and Council's were provided information on the changes as opposed to being consulted on what is proposed.*
6. *From 1 December 2023:*
  - a) *A sex services premises will fall under the definition of a 'shop', meaning the use is as of right (no planning permit required) in a commercial zone as well as in a mixed use zone (where the floor area does not exceed 150sqm) where a permit would then be required.*

- b) *Sex work will be allowed as a home business in the same way as other home businesses are allowed to operate.*
- c) *Where a use is as of right, a planning approval is not required from Council and there is no requirement to advise or notify neighbours of a proposed use, understanding Council still has a investigation and potential enforcement role, only where a use is contrary to the exemptions within the planning scheme.*
7. *Whilst street-based sex work does not fall under the legislative requirements of the Planning Scheme, the legislation decriminalises street-based sex work in most locations from 10 May 2022, but it remains illegal near a place of worship, school or other select locations frequented by children during the period of 6am to 7pm on any day, with any enforcement being the responsibility of Victoria Police.*

### **INTRODUCTION**

The purpose of this report is to advise Council of Amendment VC217 which was recently gazetted. The amendment introduces changes to the planning scheme from 1 December 2023 arising from the Sex Work Decriminalisation Act 2022.

### **BACKGROUND**

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

In March 2022, the Victorian Parliament passed the Sex Work Decriminalisation Act 2022 which will repeal the Sex Work Act 1994 and terms in other legislation, including, 'brothel', 'sex work' and 'sexual services'. The new Act deletes references to the Sex Work Act and the above terms, and introduces a new defined land use term 'sex services premises', to replace the land use term 'brothel'.

The new Act decriminalises consensual sex work between adults and abolishes the sex work licensing system. It instead regulates sex work businesses through mainstream business regulators, such as WorkSafe, the Department of Health, Local Government, and Victorian Commission for Gaming and Liquor Regulation.

The first stage of the decriminalisation implementation commenced in May 2022. This involved removing offences and penalties for individuals participating in the act of consensual sex work in most circumstances,

reviewing and amending advertising controls, repealing the exempt small owner operator register and introducing anti-discrimination protections for sex workers. This aligns with the Victorian Government dismantling the sex work licensing and registration system established by the *Sex Work Act 1994*.

This means there will be no criminal penalties associated with operating a sex work business without a licence, or for working as an independent sex worker without being registered as an exempt owner-operator.

The second stage involves the introduction of changes to the planning scheme in the form of Amendment VC217.

## ***DISCUSSION***

### ***Planning Scheme Amendment VC217***

Amendment VC217 was gazetted on 23 June 2022. The amendment changes the Victoria Planning Provisions (VPP) and all planning schemes to implement the decriminalisation of sex work in Victoria.

The date of operation of Amendment VC217 is 1 December 2023.

The objective of the change is to:

- Improve the safety of sex workers
- Reduce the stigma around sex work
- Address discrimination against sex workers.

The amendment explanatory note details that these objectives 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.

The amendment changes introduced into the Victoria Planning Provisions (VPP) and all planning schemes include the following:

- inserting two new strategies in clause 17.02-1S (Business)
- deleting clause 53.03 (Brothels)
- deleting the general terms 'sex work' and 'sexual services' in clause 73.01 (General terms)
- deleting the land use term 'brothel' in clause 73.03 (Land use terms)
- deleting 'but not a brothel' in the definition of 'home based business' in clause 73.03
- inserting a new land use term and definition 'sex services premises', in clause 73.03 and including the new term within 'shop'

- inserting the term 'sex services premises' in the nesting diagram in clause 73.04-12 (Retail premises group [sub-group of shop])
- deleting any reference to 'brothel' in a zone, a schedule to a zone, a schedule to clause 45.08 (Melbourne Airport Environs Overlay), clause 51.02 (Metropolitan green wedge land: core planning provisions) and clause 73.04-12 (Land use terms that are not nested), and making any necessary consequential amendments to related provisions
- amending the Table of Uses in the Industrial 1 Zone, Industrial 2 Zone, Industrial 3 Zone and Port Zone to specify 'sex services premises' as a section 2 (permit required) use.

Refer **Attachment 1**: Amendment VC217 Explanatory Report.

### **Commentary**

The new definition will align planning controls for a sex services premises will fall under the definition of a 'shop', meaning the use is as of right (no planning permit required) in a commercial zone as well as in a mixed use zone (where the floor area does not exceed 150sqm) where a permit would then be required.

The change will also allow sex work to be undertaken as a home business in the same way as other home businesses. As with all home based businesses, they must comply with particular provision of Clause 52.11 (Home Based Business). In a home based business the person conducting the business, must use the dwelling as their principal place of residence and no more than two persons who do not live in the dwelling may work in the home based business at any time without any approval required from Council. A permit may be granted under the home based business provisions to allow no more than three people who do not live in the dwelling to work in the occupation at any one time.

Before the amendment comes into operation, planning permit applications will continue to be assessed under the existing planning controls.

It is highlighted that criminal offences relating to children, coercion and other forms of non-consensual commercial sexual activity will still continue to apply and will be moved to the *Crimes Act 1958 (Vic)*.

Furthermore, whilst street-based sex work does not fall under the legislative requirements of the Planning Scheme, we note that as part of the raft of changes to sex work the Victorian Government has decriminalised street-based sex work in most locations from 10 May 2022. However, soliciting or loitering for the purposes of street-based sex work will still be illegal where it occurs near a place of worship, school or other select locations frequented by children during the period of 6am to 7pm on any day. Street based sex

work will not be administered or enforced under the planning scheme, it will be monitored and enforced by the Police.

### ***POLICY IMPLICATIONS***

The State Government deems the current system as a complex, dangerous industry that has resulted in many negative impacts for sex workers and business operators.

The proposed changes will ensure that provisions of the planning scheme are consistent with the intent of the planning reforms and decriminalisation of sex work.

Planning schemes across Victoria will be updated on 1 December 2023 with the changes approved under Amendment VC217 once it comes to operation.

### ***SOCIAL IMPLICATIONS***

It is noted that the purpose of the changes made to the planning scheme under Amendment VC217 is part of the state government's plan to decriminalisation of sex work in Victoria with the objective to:

- Improve the safety of sex workers
- Reduce the stigma around sex work
- Address discrimination against sex workers.

### ***HUMAN RIGHTS CONSIDERATIONS***

The Project does not impact any rights listed in the Charter of Human Rights and Responsibilities Act 2006

### ***GENDER IMPACT ASSESSMENT***

Monash City Council is committed to meaningful progress through the completion of Gender Impact Assessments.

In this instance a Gender Impact Assessment is not required as this is a state legislative change that did not include the opportunity for input from Local Government.

### ***FINANCIAL IMPLICATIONS***

We do not have sufficient information at this time to ascertain with any certainty any financial implications on the City Planning Team with regard to staffing considering application volume (where a permit is triggered) and possible enforcement.

**CONCLUSION**

Amendment VC217 was gazetted on 23 June 2022 and the date of operation is 1 December 2023. This amendment forms part of the raft of changes the Victorian government have introduced across various legislative frameworks to decriminalised sex work 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.

**Attachments**

Attachment 1: Amendment VC217 Explanatory Report