

# Sex Work (Fees) Regulations 2014 Regulatory Impact Statement

Prepared by Ernst & Young for Consumer Affairs Victoria

CONSUMER AFFAIRS VICTORIA

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# **Sex Work (Fees) Regulations 2014**

## **Regulatory Impact Statement**

This Regulatory Impact Statement has been prepared to fulfil the requirements of the *Subordinate Legislation Act 1994* and to facilitate public consultation on the proposed Sex Work (Fees) Regulations 2014.

The objective of the proposed Regulations is to prescribe a new fee structure and fee amounts that appropriately reflect the costs of efficiently administering the Act, while recognising the impact that price pressures may have on the viability of a regulated sex work industry.

A copy of the proposed Regulations is provided in the appendix to this Regulatory Impact Statement.

Public comments are invited on the Regulatory Impact Statement and the proposed Regulations. All comments must be in writing, preferably in Microsoft Word format. Comments should be marked "Sex Work (Fees) RIS", and forwarded by post or email no later than 5.00 pm on Wednesday 21 May 2014, to:

Sex work fees RIS  
Consumer Affairs Victoria  
GPO Box 123  
MELBOURNE VIC 3001

or

[cav.consultations@justice.vic.gov.au](mailto:cav.consultations@justice.vic.gov.au)

All comments and submissions will be treated as public documents, unless the person making the comment or submission requests that it not be publicly available.



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4 April 2014

Ms Claire Wallom  
Senior Policy Advisor  
Consumer Affairs Victoria  
Department of Justice  
17/121 Exhibition Street  
MELBOURNE VIC 3000

Dear Ms Wallom

### **ADVICE ON THE ADEQUACY OF REGULATORY IMPACT STATEMENT**

Thank you for seeking advice on the Regulatory Impact Statement (RIS) on the proposed Sex Work (Fees) Regulations 2014.

The Victorian Competition and Efficiency Commission (VCEC) advises on the adequacy of RISs as required under section 10(3) of the *Subordinate Legislation Act 1994* (the Act). I advise the final version of the RIS received by the VCEC on 4 April 2014 meets the requirements of section 10 of the Act.

The VCEC's advice is based on the adequacy of the evidence presented in the RIS and is focused on the quality of the analysis rather than the merits of the proposal itself. **Therefore, the VCEC's advice the RIS is adequate does not represent an endorsement of the proposal.**

In the interests of transparency, it is government policy VCEC's advice be published with the RIS when it is released for consultation.

If you have any questions, please contact [RegulationReview@vcec.vic.gov.au](mailto:RegulationReview@vcec.vic.gov.au).

Yours sincerely

Andrew Walker

**Assistant Director**

**Victorian Competition and Efficiency Commission**

# Sex Work (Fees) Regulations 2014

Regulatory Impact Statement

Consumer Affairs Victoria

April 2014



Building a better  
working world

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## Glossary

BLA	Business Licensing Authority
CAV	Consumer Affairs Victoria
Fees Regulations	<i>Sex Work (Fees) Regulations 2004</i>
RIS	Regulatory Impact Statement
The Act	<i>Sex Work Act 1994</i>

# Executive summary

## Introduction

EY has been engaged by Consumer Affairs Victoria (CAV) to prepare this Regulatory Impact Statement (RIS) for the purpose of replacing sunseting regulations in the Victorian sex work industry (the *Sex Work (Fees) Regulations 2004* – the *Fees Regulations*).

The Victorian Guide to Regulation<sup>1</sup> outlines the requirements for preparing a RIS to replace sunseting regulations. When replacing sunseting regulations, it is necessary to:

- Demonstrate that the nature and extent of the problem still warrant regulatory response
- Evaluate the effectiveness of the existing regulatory response
- Substantiate that the current response is adequate or that another response is required
- Conduct a cost benefit analysis of the identified response with the base case of an unregulated response
- Consult with relevant stakeholders
- Release the final RIS and regulations for a minimum of 28 days' public consultation.

## Context – the sex work industry

Prior to the 1980s, sex work in Victoria was not formally regulated, but instead governed by a range of Acts and considered, by and large, illegal. Recognising the reality of sex work in society, the Cain Government passed the *Planning (Brothel) Act 1984* in an effort to regulate establishments providing sexual services but operating as "massage parlours".

The *Sex Work Act 1994* (the *Act*), the current Act which governs the Victorian sex work industry, legalised sex work under the requirement that business only be carried on by a person holding a licence. The sex work occupations requiring the approval of the Business Licensing Authority (BLA) are:

- Sex work service providers – owners of businesses that provide sex work services in brothels, escort agencies or both
- Brothel managers – persons who are authorised to personally supervise the operation of a sex work business.

Small owner-operators do not require BLA approval, but must be registered with the BLA.

CAV regulates the sex work industry, providing all administrative support for BLA decision-making, as well as undertaking compliance monitoring and enforcement of parts of the *Act*, educational activities and stakeholder engagement; and policy and legislation work.

Victorian legislation and regulations that play a major role in governing the sex work industry include:

- *Sex Work Act 1994*: regulates and controls sex work in Victoria
- *Sex Work Regulations 2006*: provides for the safety of sex workers, clients and the general community
- *Sex Work (Fees) Regulations 2004*: prescribes fees to be paid under the *Act*
- *Public Health and Wellbeing Act 2008*: promotes and protects public health and wellbeing in Victoria.

The cost of administering the bulk of the *Sex Work Act 1994* and the *Sex Work Regulations 2006* is borne by the BLA and CAV. The Department of Health administers the *Public Health & Wellbeing Act 2008*, while Victoria Police is responsible for enforcement against the illegal sector.

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<sup>1</sup> Government of Victoria (2011) *Victorian Guide to Regulation*, Department of Treasury and Finance, Melbourne.



## Nature and extent of the problem

Although there are a range of viewpoints on regulating sex work from criminalisation to decriminalisation, regulation through licensing is often recognised as a superior option to outlawing the industry as a whole. Criminalising sex work ignores the reality of the industry's existence and drives it underground. This can lead to a range of problems including:

- Spread of sexually transmitted diseases
- Compromised safety of workers
- People trafficking for sex work
- Exploitation of children
- Prevalence of associated crime and corruption.

Regulations and fees do affect the size of the industry, with the fees collected impacting the government's ability to undertake activities to ensure compliance.

## Size of the current industry

As regulators of the sex work industry, CAV (through the BLA) collects information regarding those who legally engage in sex work in Victoria. The licensed industry has been fairly static for the last few years, with the total number of sex work service providers and brothel managers remaining fairly constant.

As of July 2013, the Victorian sex work industry comprised<sup>2</sup>:

- 139 licensed sex work service providers, who were licensed to work in:
  - Escort agencies only – 18
  - Brothels only – 46
  - Brothels and escort agencies – 75
- 741 licensed brothel managers
- 525 small owner-operators, who are exempt from requiring a licence.

There are 97 licensed brothels (physical buildings)<sup>3</sup> in Victoria, however there is no reliable number regarding the scale of illegal brothels. Estimates range from 7 (according to regulatory and enforcement officers) to 40 (according to sex workers themselves) while estimates of the number of people that engage in illegal private work ranges from 100 to 450. Industry participants have estimated that the number of illegal brothels operating far exceeds this estimate with ratios closer to 10 illegal brothels for every legal business. This wide range of estimates reflects the fluidity of the illegal industry and the general ease with which workers can move between the legal and illegal sectors<sup>4</sup>.

While history shows that demand for sex services is fairly inelastic to changes in personal income, cheaper alternatives such as adult matchmaking sites and pornography will continue to compete with the sex work industry. As such, the industry is generally regarded as being in the mature stage of its life cycle and even in decline<sup>5</sup>.

## Identified problem

The problems addressed by the *Fees Regulations* and this RIS relate to ensuring that the costs of administering the *Act* align with the revenue generated for the Sex Work Regulation Fund and the objectives of regulation. There are two main considerations which need to be balanced against each other in determining the appropriate form of cost recovery<sup>6</sup>:

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<sup>2</sup> Information from Consumer Affairs Victoria

<sup>3</sup> Note that there are more licensees than there are businesses, as more than one licensee can run a business in a partnership arrangement.

<sup>4</sup> Pickering, S., Maher, J., & Gerard, A. (2009) *Working in Victorian Brothels*, Consumer Affairs Victoria.

<sup>5</sup> Shulman, C. (2013). *IBISWorld Industry Report – Brothel Keeping and Prostitution Services in Australia*.

<sup>6</sup> Government of Victoria (2013) *Cost Recovery Guidelines*, Department of Treasury and Finance, Melbourne.

- Efficiency – that the processes and resource allocation underlying the administration of the *Act* are efficient
- Equity – that the costs are appropriately born by those who accrue the benefits.

Current fee levels under the *Fees Regulations* were prescribed in 2004, based on sex work licensing activities at that time. Cost recovery was not achieved from the outset, and moreover, the nature of licensing the sex work industry has changed. As a result, the current costs of administering the *Act* greatly exceed the revenue.

## The size of the problem

Presently, the costs of effective administration of the *Act* greatly exceed the revenue. Based on recent discussions with the BLA and CAV, it is expected that in 2013/14, the combined cost of the sex work service provider and brothel manager schemes was \$1,664,086 compared to \$899,560 in revenue. This equates to 54% cost recovery. More details regarding costs and revenue generation are contained in this section.

The cost of regulating the sex work industry is not being fully recovered. Should this continue, the following consequences may result:

- Continued pressure to cut the costs of administering the *Act*. CAV and the BLA are obligated by law and community expectations to thoroughly examine the suitability of sex work service providers and brothel managers. Further reducing resources may compromise their ability to do so. Additionally, ensuring industry probity comes at a cost and reducing regulatory effort in this area may result in higher levels of illegal activity
- The primary beneficiaries from sex work regulation (the sex work industry) being too heavily subsidised by other licensing schemes and other parts of CAV. This contradicts general government objectives of equitable cost recovery
- Cost recovery continues to be inefficient. The value placed on licences and other items does not equal the cost of resources required to regulate the industry (CAV and BLA costs) due to inappropriate market signals.

## Objectives of the proposed *Fees Regulations*

The Government's objectives (through the range of regulations governing the industry) are to:

- Minimise the harms associated with sex work by protecting children from the industry
- Lessen the impact of the industry on the community and community amenity
- Maintain high standards of industry probity to ensure criminals are not involved in the industry
- Protect the health and safety of those who engage in sex work, including minimising health risks for workers and their clients and protecting workers from exploitation and violence.

The objective of the proposed changes to the *Fees Regulations* is to set fees which appropriately reflect the costs borne by CAV and the BLA in administering the *Act*. The proposed fees will take into account changes to licensing the sex work industry since 2004.

General State Government policy is that regulatory fees and user charges should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met. Full cost represents the value of all the resources used or consumed in the provision of an output or activity.

The *Cost Recovery Guidelines* also outline the circumstances under which *partial* cost recovery may be justified:

- Where merit goods are being provided or where activities generate benefits to unrelated third parties
- Where objectives of income redistribution or social insurance are important
- Where concessions are deemed appropriate
- Where full cost recovery may undermine innovation and product development
- Where the government is providing goods and services on a commercial basis in competition with the private sector
- Where full cost recovery could undermine other objectives.

## Options

To satisfy the objectives of the *Fees Regulations* a range of options were developed for analysis. Due to changes in operating conditions in the industry, during options development the fee structure (as well as level) was considered, including the elimination of some fee items and inclusion of others.

After consideration of alternative fee structure, five regulatory options were analysed in detail:

- Option 1: Base Case (no fees)
- Option 2: Retain Current Fee Structure (at current fee levels)
- Option 3: Retain Current Fee Structure (at full cost recovery levels)
- Option 4: Remove Fee for Telephone Numbers and add fee items (section 40, insolvent managers and register inspection) at 100% cost recovery
- Option 5: Remove Fee for Telephone Numbers and add fee items (section 40, insolvent managers and register inspection) at 70% cost recovery.

## Options analysis

Not all impacts of the *Fees Regulations* were able to be measured. As such a multi-criteria analysis (MCA) was undertaken to assess options. An MCA is a decision making tool that can be used when it is not possible to quantify and value the main costs and benefits of a proposal. MCA involves:

- Specifying assessment criteria
- Assigning a 'weighting' to each criterion
- Assigning scores for each option in relation to each criterion; and
- Calculating a weighted score for each option.

The objective of the proposed fee structure and level is to recover the costs of administering the sex work industry, and to further the Government's broader objectives. The MCA used the following criteria to assess each of the options:

- Efficiency: The extent to which all costs are recovered (including the extent to which fixed costs are recovered over an optimal recovery period)
- Equity: The ability of businesses to pay (and the removal of barriers for small business)
- Effectiveness: The effect on compliance
- Simplicity: The ease with which the fee structure and items are understood.

To support the analysis, consultation was conducted with Australian Adult Entertainment Industry Inc. (AAEI) and five businesses ranging in size, type and location.

Key themes to emerge from the consultations that have influenced the analysis are:

- Over the past two to three years there has been increased competition from small owner-operators, resulting in a squeeze on profits
- Prices for services have not increased for several years putting pressure on businesses
- Businesses are considering cutting costs to ensure ongoing commercial viability
- The number of illegal brothel and escort agencies has grown, increasing the competition with legal businesses
- Illegal brothels do not adhere to the advertising restrictions to which legal businesses are subject: they advertise differently, further restricting the ability for legal businesses to trade on a level playing field
- It is not well understood what CAV, the BLA and Victoria Police do with regards to monitoring and enforcement
- Licensees believe they are unfairly dealt with compared with small owner-operators and illegal businesses
- Businesses do not understand what they receive for their annual licensing fee.

Several businesses believed that the legal industry would shrink if further price pressures were applied.

The analysis indicates that Option 5 is the preferred response. This option represents a balance between achieving a greater level of cost recovery and maintaining current industry structure.

Due to the significant increase in fees and the anticipated impact on businesses it is recommended that the fee increases be phased in over three years. The table below summarises the recommended solution and the three year phased in fee amounts. Note that fees will be expressed in fee units in the *Fees Regulations*. Dollar values are presented in the RIS for ease of comparison and understanding.

Table 1: Preferred option fee structure and level

Item	Current fees (indexed for 2014/15) 54% Cost Recovery	Proposed fees (Option 5)	Total increase per fee item by YEAR 3	Phase in (excluding DTF annual escalation)		
				YEAR 1 (2014/15) 57% Cost Recovery	YEAR 2 (2015/16) 63% Cost Recovery	YEAR 3 (2016/17) 70% Cost Recovery
<b>Sex Work Service Providers</b>						
New Applications						
<i>Escort Agency Only</i>	\$2,251.40	\$3,014.20	34%	\$2,505.60	\$2,759.90	\$3,014.20
<i>Brothel Only</i>	\$4,502.70	\$6,028.30	34%	\$5,011.10	\$5,519.70	\$6,028.30
<i>Escort + Brothel</i>	\$4,502.70	\$6,028.30	34%	\$5,011.10	\$5,519.70	\$6,028.30
Licence Renewals (all)						
<i>Escort Agency Only</i>	\$2,573.00	\$3,444.80	34%	\$2,863.40	\$3,154.10	\$3,444.80
<i>Brothel Only</i>	\$2,573.00	\$3,444.80	34%	\$2,863.40	\$3,154.10	\$3,444.80
<i>Escort + Brothel</i>	\$2,573.00	\$3,444.80	34%	\$2,863.40	\$3,154.10	\$3,444.80
Late Fees	\$386.00	\$516.80	34%	\$429.60	\$473.20	\$516.80
Extension Time	\$192.90	\$258.30	34%	\$214.70	\$236.50	\$258.30
Additional Room	\$482.50	\$645.90	34%	\$536.90	\$591.40	\$645.90
Add. Business name	\$482.50	\$645.90	34%	\$536.90	\$591.40	\$645.90
Section 40 application		\$1,508.50	n/a	\$502.80	\$1,005.70	\$1,508.50
Inspect the register		\$35.00	n/a	\$11.70	\$23.30	\$35.00
<b>Brothel Managers</b>						
New Applications	\$334.50	\$448.00	34%	\$372.30	\$410.20	\$448.00
Renewals (3 year)	\$334.50	\$448.00	34%	\$372.30	\$410.20	\$448.00
Operate insolvent		\$114.80	n/a	\$38.30	\$76.50	\$114.80

Fees will increase each year by the annual fee unit escalation set by the Department of Treasury and Finance. This increase differs from year to year. The fees set out above are in 2014/15 dollars and may not reflect the exact amount paid in that year. The fees paid in years 2 and 3 are likely to be more than that set out above due to fee unit escalation.

Fees are presented in fee units in the *Fees Regulations*. In 2013/14 each fee unit was \$12.84. It is predicted the fee unit will increase to \$13.16 in 2014/15. The fee units over the next three years are presented below.

Table 2: Fee units

Item	Fee units			
	Current (2013/14)	YEAR 1 (2014/15)	YEAR 2 (2015/16)	YEAR 3 (2016/17)
<b>Sex Work Service Providers</b>				
New Applications				
<i>Escort Agency Only</i>	171.07	190.39	209.72	229.04
<i>Brothel Only</i>	342.13	380.78	419.43	458.08
<i>Escort + Brothel</i>	342.13	380.78	419.43	458.08
Licence Renewals (all)				
<i>Escort Agency Only</i>	195.50	217.59	239.67	261.76
<i>Brothel Only</i>	195.50	217.59	239.67	261.76
<i>Escort + Brothel</i>	195.50	217.59	239.67	261.76

Item	Fee units			
	Current (2013/14)	YEAR 1 2014/15	YEAR 2 (2015/16)	YEAR 3 (2016/17)
Late Fees	29.33	32.64	35.96	39.27
Extension Time	14.66	16.32	17.97	19.63
Additional Room	36.66	40.80	44.94	49.08
Add. Business name	36.66	40.80	44.94	49.08
Section 40 application		38.21	76.42	114.63
Inspect the register		0.89	1.77	2.66
<b>Brothel Managers</b>				
New Applications	25.42	28.29	31.17	34.04
Renewals (3 year)	25.42	28.29	31.17	34.04
Operate insolvent		2.91	5.81	8.72

In conclusion:

- The proposed fees are set in accordance with the cost recovery principles in the Victorian Guide to Regulation (Edition 2.1, August 2011) and the Cost Recovery Guidelines (January 2013) with partial cost recovery based on a desire to achieve regulatory objectives of monitoring and enforcing requirements on sex work providers
- The proposed fees do not adversely impact small business.

## Small business and competition

The structure of the fees means larger businesses pay more during both the application phase and renewal phase as additional charges for rooms and business names are included. As such there is not a disproportionate impact on small businesses when compared with large businesses in the industry.

Competition, however, may be impacted by an increase in fees. The guiding principle when considering competition impacts is that regulation should not restrict competition unless it can be demonstrated that:

- The benefits of the restriction/regulation to the community as a whole outweigh the costs
- The objectives of the regulation can only be achieved by restricting competition.

Analysis of fee increases and consultation with a selection of industry stakeholders and participants found:

- Within the legal sector it is unlikely that increasing the fees will impact on competition between organisations.
- Due to increased competition from illegally operating businesses and small owner-operators, increasing fees will impact on competition in the industry and may force some legitimate businesses to close or operate illegally.

The increase in competition from illegal business was considered in the analysis of options.

## Enforcement

CAV is tasked with the following activities that will continue into the future:

- Compliance monitoring inspections of licensed brothels (including online surveillance)
- Responding and dealing appropriately with emerging issues in the licensed sex work industry
- Responding to enquiries and complaints from the public and industry
- Monitoring compliance with sex work advertising requirements
- Engaging and being responsive with regulatory partners such as Department of Immigration and Border Protection, Australian Federal Police, Victoria Police and the Department of Health.

CAV and the BLA are not responsible for monitoring and enforcement of the unlicensed sex work industry. This is the responsibility of Victoria Police, and in some cases, the Australian Federal Police. Therefore, no part of the sex work fee scheme recovers an amount for enforcement against unlicensed brothels and escort agencies.

However, where illegal activity is detected in *licensed* brothels or escort agencies, CAV and the BLA do work closely to assist policing authorities wherever possible, and where illegal activity is proven, may be involved in related regulatory activities such as proceedings for disciplinary action or amendments to licence conditions.

# 1. Introduction

## Summary

- This RIS reviews the *Sex Work (Fees) Regulations 2004*, which are due to sunset in 2014, with a view to reassessing the fees currently charged
- The *Sex Work Act 1994* and *Sex Work Regulations 2006* control legal sex work in Victoria
- Occupations requiring a licence or approval under the *Act* are sex work service providers and brothel managers.

## 1.1 Context

EY has been engaged by Consumer Affairs Victoria (CAV) to prepare this Regulatory Impact Statement (RIS) for the purpose of replacing sunseting regulations in the Victorian sex work industry (the *Sex Work (Fees) Regulations 2004* – the *Fees Regulations*).

The objective of a mandated ten-year sunseting provision is to prompt regular review of government regulation to ensure that there is a justified need for its continuance. Where regulation is still required, the most efficient form of regulation should be adopted, following adequate community consultation<sup>7</sup>.

## 1.2 The sex work industry in Victoria

### 1.2.1 Background and brief history

Prior to the 1980s, sex work in Victoria was not formally regulated, but instead governed by a range of Acts and considered, by and large, illegal. Recognising the reality of sex work in society, the Cain Government passed the *Planning (Brothel) Act 1984* in an effort to regulate establishments providing sexual services but operating as “massage parlours”.

However, it was only in 1985 that the first (and hitherto only) extensive study into the Victorian sex work industry was conducted. What is known as the Neave Inquiry<sup>8</sup> recommended that sex work related activities be legalised and that criminal laws exist only to protect minors and vulnerable persons. The Neave Inquiry paved the way for the *Prostitution Regulation Act 1986*.

Subsequent studies examining the effectiveness of the *Prostitution Regulation Act 1986* led to significant changes and ultimately, the passing of the *Prostitution Control Act 1994*, now known as the *Sex Work Act 1994* (the *Act*), the current Act which governs the Victorian sex work industry. The *Act* legalised sex work under the requirement that business only be carried on by a person holding a licence. The sex work occupations requiring the approval of the Business Licensing Authority (BLA) are:

- Sex work service providers – owners of businesses which provide sex work services in brothels, escort agencies or both
- Brothel managers – persons who are authorised to personally supervise the operation of a sex work business.

An exception to the requirement to hold a licence applies to businesses run by one or two workers, where no other person is involved. These small owner-operated businesses must, however, register with the BLA.

The legal sex work industry in Victoria is thus licensed, approved or registered by the BLA. CAV also regulates the industry, providing all administrative support for BLA decision-making, as well as undertaking compliance monitoring and enforcement of parts of the *Act*, educational activities and stakeholder engagement; and policy and legislation work.

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<sup>7</sup> Government of Victoria (2011) *Victorian Guide to Regulation*, Department of Treasury and Finance, Melbourne.

<sup>8</sup> Neave, M. (1985) *Inquiry into Prostitution*.

## 1.3 Current legislative and regulatory requirements

### 1.3.1 The Sex Work Act 1994

The *Sex Work Act 1994* regulates and controls sex work in Victoria.

The objectives of the *Act* are:

- (a) to seek to protect children from sexual exploitation and coercion;
- (b) to lessen the impact on the community and community amenities of the carrying on of sex work-related activities;
- (c) to seek to ensure that criminals are not involved in the sex work industry;
- (d) to seek to ensure that brothels are not located in residential areas or in areas frequented by children;
- (da) to seek to ensure that no one person has at any one time an interest in more than one brothel licence or permit;
- (e) to maximise the protection of sex workers and their clients from health risks;
- (f) to maximise the protection of sex workers from violence and exploitation;
- (g) to ensure that brothels are accessible to inspectors, law enforcement officers, health workers and other social service providers; and
- (h) to promote the welfare and occupational health and safety of sex workers.

Under the *Act*, sex work service providers must be licensed with the BLA and a licensee or approved manager must be on site at all times. Sex work service providers and brothel managers must be able to demonstrate their suitability to provide such services in relation to, amongst other things, having a reputable character, adequate financial resources and business acumen, and possessing an understanding of their obligations under the *Act*. Further, applicants and their identified associates must have not been previously charged with an indictable offence.

The *Act* also seeks to protect the health of the community. Workers and clients must adopt safer sex practices by law. It is an offence for sex workers to provide services knowing they are infected with a sexually transmitted disease (STD). It is also an offence for a licensee or manager to permit a worker to work if they know that the worker is infected. If services are provided by a worker infected with an STD, the worker, licensee or manager is presumed, under the *Act*, to have known of the infection. The only exception to this is where the licensee, manager or worker reasonably believed otherwise, and that the worker had been having regular, quarterly STD tests. As such, it is industry practice that sex workers undergo testing for STDs every three months.

The *Act* also restricts where brothels can be located. Namely, brothels must not be located within 100 metres of a residence (50 metres in the Melbourne CBD) nor within 200 metres of a place of worship, hospital, school or any other place where children may gather (except in the Melbourne CBD).

### 1.3.2 The Sex Work Regulations 2006

The principal objective of the *Sex Work Regulations 2006* is to provide for the safety of sex workers, their clients and the general community by defining their rights and responsibilities.

A secondary objective of the *Sex Work Regulations 2006* is to provide an administrative framework to enable the efficient operation of the *Act* and to prescribe, for the purposes of the *Act*:

- (a) a list of sexually transmitted diseases;
- (b) requirements for the safety of persons working in a sex work business;
- (c) safety matters relevant to the suitability of licence applicants;
- (d) controls on advertising by sex work service providers;



- (e) particulars to be given to the BLA by small owner-operated businesses;
- (f) the form of registrar's certificates (that is, matters certified by the Registrar of the BLA); and
- (g) infringement offences and penalties.

### 1.3.3 The Sex Work (Fees) Regulations 2004

The *Sex Work (Fees) Regulations 2004* (the *Fees Regulations*) prescribe fees to be paid under the *Act*. Fees are currently collected for the following items:

- Sex work service provider licence application fees
- Sex work service provider annual licence fee
- Brothel manager approval application fees
- Brothel manager renewal fees (three-yearly)
- Additional items (telephone numbers, business names and rooms)
- Extension of time and late payment fees.

The fees cover activities undertaken by CAV and BLA in regulating the legal industry, not the illegal sector.

In line with 2010 election commitments, the Government has reformed regulation of the sex work industry by:

- Making Victoria Police the lead agency for enforcement against illegal sex work
- Amending legislation to minimise or eliminate uncertainty about enforcement responsibility
- Clarifying that only Victoria Police can take action against unlicensed brothels
- Setting up a clear system of referrals from CAV to police.

In 2011, the Victorian Government introduced new laws into Parliament to make Victoria Police the lead agency for the enforcement of laws relating to the sex work industry and to reduce unlawful conduct. Therefore, CAV and the BLA are not responsible for monitoring and enforcement activities in relation to the illegal sex work industry.

However, where illegal activity is detected in *licensed* brothels or escort agencies, CAV and the BLA do work closely to assist policing authorities wherever possible, and where illegal activity is proven, may be involved in related regulatory activities such as proceedings for disciplinary action or amendments to licence conditions.

#### Regulating the industry – CAV and BLA activities

Consumer Affairs Victoria (CAV) and the Business Licensing Authority (BLA) are responsible for administering the *Fees Regulations*.

As regulators, CAV and the BLA must ensure that those applying for sex work service provider licences and brothel manager approvals fulfil the requirements of the *Act*. Activities undertaken by CAV and BLA fall into three broad categories:

- Direct licensing that includes:
  - New licence applications (including pre-lodgement activities, processing payments and probity/financial checks)
  - Annual statements (including processing of annual statements, licence amendments and annual licence fees)
  - Application for approval of a brothel manager and three-yearly renewal of approval
  - Extension of time and late payments
  - Processing of notification of additional rooms, additional telephone numbers, additional business names
- Out of pocket expenses that include activities that require fees to be paid such as:
  - Crimtrac (Police check)
  - Veda (financial check)
  - Property searches
  - Photo ID

- Advertising costs – for all sex work applications.
- Distributable costs from other business units of CAV and BLA that contribute to the sex work scheme such as:
  - Planning, monitoring and assessment
  - Dispute resolution and reduction
  - Trader conduct
  - Enforcement (of the legal sector only)
  - Legal services
  - State-wide service delivery
  - Corporate Resources Division
  - Service Delivery Division
  - Policy and Legislation (relating specifically to the sex work industry).

More information on the cost of regulating the industry and fees is found in the following section.

### 1.3.4 Other regulation

Sex work service providers must also consider a number of other regulations, including the *Public Health and Wellbeing Act 2008*.

The purpose of the *Public Health and Wellbeing Act 2008* is to promote and protect public health and wellbeing in Victoria. Provisions under Part 8, Division 10 relate specifically to brothels and escort agencies and define penalties for brothel or escort proprietors (as they are known in that Act) for non-compliance. Amongst other things, it provides for health and wellbeing as it pertains to:

- Safer sex practices
- Refusal of service by workers
- Evidence of medical examination of workers
- Information about STDs to workers and clients
- Provision of clean linen and towels
- Provision of showers and baths
- Inspections and interviews by authorised officers.

Standard regulations that apply to all businesses (such as taxation, workplace safety, etc) must also be considered, as must local council-administered planning schemes, in the case of brothels.

## 1.4 The Sex Work Regulation Fund

Section 66 of the *Act* establishes a trust account called the Sex Work Regulation Fund (the Fund).

Revenue into the Fund consists of:

- Fees paid under the *Act*
- Fines or penalties paid in respect of an offence against the *Act*
- Other money received by the BLA under the *Act* or otherwise required to be paid into the Fund, including interest and legal recovery costs.

Payments from the Fund consist of:

- Costs and expenses incurred in the administration of the *Act* (outlined in Section 2.5)
- Any fees paid under the *Act* that are required to be refunded.

The costs of administering the *Act* currently exceed the revenue generated. The reserves of the Fund are insufficient to meet an ongoing deficit, requiring a 'top-up' from CAV's general funding.

## 1.5 Requirements for a Regulatory Impact Statement

The Victorian Guide to Regulation<sup>9</sup> outlines the requirements for preparing a RIS to replace sunseting regulations. When replacing sunseting regulations, it is necessary to:

- Demonstrate that the nature and extent of the problem still warrant regulatory response
- Evaluate the effectiveness of the existing regulatory response
- Substantiate that the current response is adequate or that another response is required
- Conduct a cost benefit analysis of the identified response with the base case of an unregulated response
- Consult with relevant stakeholders
- Release the final RIS and regulations for a minimum of 28 days' public consultation.

## 1.6 This Regulatory Impact Statement

Given the above requirements and objectives, this RIS seeks to evaluate the changes to regulating the Victorian sex work industry and their associated costs with a view to reassessing the fees currently being charged under the *Fees Regulations*. More specifically, this RIS will:

- Define and quantify the problem that needs to be addressed and appropriateness of government regulatory action (Section 2)
- Present the objectives of the proposed regulations (Section 3)
- Identify a range of options that will address the problem (Section 4)
- Measure the costs and benefits of the identified options as well as their potential impact on small business and competition (Section 5, Section 6 and Section 7)
- Develop an appropriate implementation plan and evaluation strategy (Section 8)
- Provide a conclusion to the analysis (Section 9).

This Regulatory Impact Statement has been prepared in accordance with requirements of the *Subordinate Legislation Act 1994* and the Victorian Guide to Regulation.

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<sup>9</sup> Government of Victoria (2011) *Victorian Guide to Regulation*, Department of Treasury and Finance, Melbourne.

## 2. Nature and extent of the problem

### Summary

- The legalisation of sex work in Victoria is aimed at protecting sex workers, children and the community
- Complete criminalisation of sex work may lead to issues such as the spread of sexually-transmitted diseases, violence and discrimination against workers, child exploitation, people trafficking for sex work and other crime
- The industry has remained at a similar size over recent years with the number of licensees remaining constant
- The costs of regulating the sex work industry currently exceed the revenue generated, with cost recovery at 54%
- There are risks associated with non-intervention as well as the inability to achieve equity and efficiency objectives.

## 2.1 Social and economic justification for regulation (the need for intervention)

### 2.1.1 Regulating the sex work industry

The need to regulate sex work in Victoria was first recognised with the passing of the *Planning (Brothels) Act 1984*. More than anything, this regulation was born out of public interest as a means of protecting society against the proliferation of organised crime, preventing discrimination against women and giving service providers the right to carry out their business in a professional manner<sup>10</sup>.

Since 1984, the essence of legalising the industry has remained the same: to protect sex workers, children and the community. While new evidence in Victoria does not exist due to regulatory requirements being in place for the past two decades, the benefits of regulations are discussed below.

### 2.1.2 The case for regulation

Legalisation and regulation is a method of drawing the industry into the mainstream environment, removing some of the associated stigma and rendering it liable to legal regulation and industrial and occupational health and safety laws<sup>11</sup>.

Regulation through licensing is often recognised as a superior option to outlawing the industry as a whole. Criminalising sex work ignores the reality of the industry's existence and drives it underground. This can lead to a range of problems that affect both industry participants and the broader community, including:

- Compromised safety of workers
- People trafficking for sex work
- Exploitation of children
- Spread of sexually transmitted diseases
- Prevalence of associated crime and corruption.

#### Safety of sex workers

Sex workers are vulnerable to violence due to a number of factors, including the solitary nature of the work. Anecdotal evidence shows that many sex workers have experienced violent or threatening situations at some stage<sup>12</sup>. Under a model of criminalisation, state and police authorities become a source of distrust for sex workers and as a result, there is an increased chance that incidents of violence go unreported for fear of being caught and exposed.

There are various safety requirements prescribed by the *Sex Work Regulations 2006*. These include:

- A concealed and easily accessible alarm button in all sex work rooms of a brothel

<sup>10</sup> Arnot, A. (2002). Legalisation of the sex industry in the state of Victoria, Australia. University of Melbourne Master's Thesis Application.

<sup>11</sup> Crofts, T. & Summerfield, T. (2007). The Licensing of Sex Work in Australia and New Zealand

<sup>12</sup> Arnot, A. (2002). Legalisation of the sex industry in the state of Victoria, Australia. University of Melbourne Master's Thesis Application.

- A mobile phone or communication device for escort agency workers to enable contact with the licensee or manager
- The maintenance of regular contact with an escort agency worker, to confirm the worker's arrival at each new premises, and the completion of each visit, and the provision of assistance as soon as possible if the worker advises that the situation is potentially unsafe
- The right of workers to refuse service to a violent or unsafe client and the responsibility of the sex work service provider to assist a worker as soon as possible
- The requirement that licensees and managers must ensure that receptionists do not negotiate on behalf of a sex worker the sexual services to be provided.

The regulation of sex work in Victoria has also brought with it the requirement for sex work service providers to comply with the occupational health and safety regulations. Brothels and escort agencies fall within the remit of WorkSafe Victoria. The *Occupational Health and Safety Act 2004* requires that employers, insofar as practicable, provide a working environment that ensures the physical and psychological safety of employees. Employer responsibilities in relation to matters such as fatigue, injuries and bullying, for example, are the same as in other workplaces.

### People trafficking for sex work

The Commonwealth Government plays the primary role in relation to people trafficking, leading policing, prosecution, research and victim support. However, these efforts are supported and complemented by the Victorian Government through stringent regulation of the legal sex work industry, policing of illegal sex work, and intelligence-sharing between State and Commonwealth agencies.

A regulated industry has not entirely precluded trafficking - trafficking has been detected in licensed Victorian brothels in the past - but the regulatory regime includes a range of measures to combat people trafficking for sex work.

Under the *Act*, a sex work service provider licence or brothel manager approval is automatically cancelled if the person is convicted or found guilty of one of a number of specified disciplinary offences. These include Commonwealth slavery offences (including slavery, sexual servitude, deceptive recruiting, trafficking in persons, trafficking in children and debt bondage) and a number of Commonwealth migration offences (including allowing unlawful non-citizens to work or allowing non-citizens to work in breach of visa conditions). Disciplinary action, such as additional conditions or a suspension, can also be taken against a licensee or brothel manager charged with one of these offences.

The *Act* also requires licensees to keep signage relating to sexual slavery on display. Current regulations prescribe the wording, size and layout of the sign, which lists indicators of sexual slavery and police contact numbers in English, Chinese (both traditional and simplified), Korean, Russian and Thai. The sign must be clearly visible, legible and displayed in a conspicuous place in the reception area of the brothel, and each room of the brothel where sex work takes place.

### Child exploitation

A robust regulatory framework allows for regular compliance monitoring of sex work service providers and the imposition of measures to ensure that children are not exposed to sex work.

Sex work by persons under 18 years of age is illegal under the *Act*. It is illegal to cause, induce or allow a child to participate in sex work. It is also illegal to enter into an agreement for sexual services from a child, or to obtain payment for sexual services provided by a child.

To eliminate any risk of exposure of children to sex work, the *Act* makes it an offence to allow any child over 18 months of age to be in a brothel at all. Further, planning controls imposed by the *Act* also seek to ensure that children are not exposed to sex work. Local councils cannot approve a planning permit for a brothel within 200 metres of a school, kindergarten or any other place where children may gather (except in the Melbourne CBD).

### Sexually transmitted diseases

Sexually transmitted diseases (STDs) are passed from one person to another through sexual contact and sometimes from a mother to a child. It has long been established that STDs impose significant costs on both the individual and the community. STDs include chlamydia, genital herpes, gonorrhoea, syphilis and the HIV virus which may lead to AIDS.

The costs of STDs may be direct (medical and transport costs), indirect (productivity losses) or intangible (physical and emotional suffering). While no extensive studies into the total cost of STDs exist, a 2013 American analysis estimated that the direct medical cost alone of treating STDs in the United States was \$16 billion every year<sup>13</sup>.

The medical cost of treating STDs is still high despite declines in recent times due to improved research and drug availability. This is particularly true for HIV. For example, the Australian Government subsidizes the cost of the anti-retroviral HIV drug Darunavir (brand name Prezista) through the Pharmaceutical Benefits Scheme. The patient co-contribution for Prezista is \$36.10 per month compared to the actual cost to the health care system, which is in excess of \$2,000 per patient, per month for the higher dosage treatment<sup>14</sup>.

Regulation of the sex work industry provides a means to impose health codes and practices. These protect not only sex workers themselves, but also their clients and thus the community. Examples include:

- Section 18A of the *Act* together with the *Public Health and Wellbeing Act 2008* require sex workers and clients to adopt safer sex practices
- Sections 19 and 20 of the *Act* make it an offence for a sex worker to provide services while knowingly infected with an STD, or a licensee or manager to knowingly allow a sex worker to do so
- The *Act* deems knowledge of the infection unless the worker can rebut this by demonstrating that he or she has engaged in regular STD testing. To assist this, the Minister for Health has made an Order that provides that quarterly testing is "regular". Although not mandatory, three-monthly testing is therefore common practice
- The Sex Work Regulations 2006 require brothel licensees and managers to ensure there is sufficient lighting in all sex work rooms of a brothel for workers to check clients for readily evident signs of STDs.

These requirements may have contributed to the fact that the incidence of STDs in Australian sex workers is among the lowest in the world<sup>15</sup>. However, given similar low rates of STDs among sex workers across the different states and territories despite vastly different regulations, it is difficult to fully attribute low rates solely to regulated testing requirements. Instead, low rates of STDs among sex workers may also be due to community-based health promotion and good sexual health services in Victoria.

### Associated crime and corruption

An illegal sex work industry can foster organised crime and corruption, and was the reality in Australia prior to legalisation. For example, the 1989 Fitzgerald Inquiry into Queensland Police corruption identified associations between police corruption and the criminalisation of prostitution<sup>16</sup>. Exploiters, traffickers and other organised crime can proliferate under an illegal model of sex work.

Legalising sex work does not however guarantee the elimination of crime. Policing the sex work industry creates opportunities for police to engage in unethical behaviour such as taking payments in exchange for non-enforcement or abusing their power. Between 2000 and 2007, there were at least 40 accounts of alleged police misconduct in the Victorian sex industry including police who allegedly owned and managed their own unlicensed brothel<sup>17</sup>. Further, a former high-ranking City of Yarra officer was sentenced to 20 months jail in 2010 for accepting \$130,000 in bribes over an eight-year period from operators of illegal brothels in exchange for tip-offs about looming inspections<sup>18</sup>.

On the other hand, completely criminalising sex work has been shown to be a largely ineffective exercise. The 1984 Neave Inquiry estimated that there were between 3000 to 4000 sex workers operating on a regular basis in Victoria despite it being illegal. Yet less than half of the 115 interviewed workers had been charged with a prostitution offence<sup>19</sup>.

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<sup>13</sup> Centre for Disease Control and Prevention (2013) *Incidence, Prevalence and Cost of Sexually Transmitted Infections in the United States: Fact Sheet*.

<sup>14</sup> Department of Health and Ageing (2013) *PBS Schedule*, accessed 29 July 2013 from [www.pbs.gov.au](http://www.pbs.gov.au)

<sup>15</sup> Department of Health and Ageing (2005) *National Sexually Transmissible Infections Strategy 2005-2008*

<sup>16</sup> Prostitution Licensing Authority (2003) *Selling Sex in Queensland*, Queensland Government.

<sup>17</sup> Ruffels, M. (2008, 25 November). *Corrupt Victoria cops 'linked to illegal sex workers'*, Canberra Times.

<sup>18</sup> Cooper, A. (2013, 16 July). *Illegal brothel owners likely to evade jail*, The Age.

<sup>19</sup> Neave, M. (1984) as cited in Arnot, A. (2002). *Legalisation of the sex industry in the state of Victoria, Australia*. University of Melbourne Master's Thesis Application.

The sex work industry licensing and regulation scheme, which requires checking of probity and associates for all licensees and brothel managers, seeks to guard against the infiltration of the industry by criminal elements.

### Benefits to industry participants

Many of the community benefits outlined above can be used by the legal sector to promote their businesses and attract additional clients. The licensing regime gives businesses a legal authority and thus helps reduce stigma traditionally associated with sex work. Licensed business can also use regulatory requirements to:

- Assure clients that there is no risk of prosecution for being caught entering or leaving an illegal brothel, or the embarrassment of a police raid
- Provide an assurance of the use of safer sex practices, the hygiene of the premises and the welfare of the workers
- Reduce risk of criminal influence within the industry (which has a historical association with organised crime), through probity and financial checks on licensees and managers

Additionally, compliance with safer sex, hygiene and workplace safety regulations has the potential to reduce the cost on business of injuries and absenteeism.

To ensure licensed brothels and escort agencies comply with regulatory requirements, a range of compliance monitoring activities are conducted each year, including investigations, inspections and surveillance. As a result, in 2012/13, a total of 32 enforcement activities were undertaken.

This statistic highlights the ongoing need to regulate the industry and ensure high levels of compliance. More detail on investigations, inspections and surveillance activities is provided in Chapter 8.

## 2.2 Size and scope of the sex work industry

### 2.2.1 Sex work in Victoria

#### The Legal Industry

The legal sex work industry includes the following regulated industry participants.

#### *(1) Licensed sex work service providers*

A sex work service provider must be a natural person and must be licensed by the BLA. Licensing involves comprehensive background checks and ongoing compliance requirements.

A sex work service provider licence is perpetual and does not require renewal; however an annual statement and annual fees must be submitted each year.

A sex work service provider's business can be one of the following:

- Brothel
- Escort agency
- Brothel and escort agency.

Brothels are premises made available for the purposes of sex work, and require a planning permit. Brothels take "in-calls" (that is, clients visit the premises). Escort agencies take "out-calls" (that is, sexual services are provided at premises not made available by the agency). Many licensed sex work service providers in Victoria choose to run a business that takes both in-calls and out-calls, and is therefore both a brothel and an escort agency.

#### *(2) Approved managers*

When operating, a licensed business that includes a brothel must at all times be personally supervised by the licensee or an approved manager (referred to in this RIS as a "brothel manager").

Brothel managers must be approved by the BLA, following background checks. An approval expires after three years.

### (3) Registered small owner-operated businesses

Small owner-operators are sex workers who work alone or with one other person. Small owner-operators can run a brothel (with a planning permit), escort agency, or both, and must register with the BLA.

Small owner-operators are sometimes known as “exempts” because they are exempt from the requirement to hold a licence. To qualify for the exemption, a small owner-operator must not be associated with another sex work service providing business, or direct clients to, or take clients directed from, another person.

Small owner-operators must submit an annual statement each year in order to remain on the register.

Currently no fee for small owner-operator businesses in the sex work industry is charged. The rationale for not charging small owner operators is to encourage registration. Charging a fee would likely create a barrier to entry for this part of the industry. Currently the registration process is simple, and probity checks and other background checks on these workers are not undertaken. Even if a fee for registration were charged, it would be low compared to other fee items, and would have little impact on revenue generation.

## 2.2.2 The size of the industry

### The Legal Industry

The licensed industry has been fairly static for the last few years, with the total number of sex work service providers and brothel managers remaining fairly constant. Registered small owner-operator numbers have decreased, probably due to a shift to annual registration, which has effectively removed discontinuing registrants and kept the register more up to date.

As of July 2013<sup>20</sup>, the regulated sex work industry comprised:

- 139 licensed sex work service providers (some working in partnerships of two or more), who were licensed to operate the following business types:
  - Brothel only – 46
  - Escort agency only – 18
  - Combined brothel and escort agency – 75
- 741 approved brothel managers
- 525 registered small owner-operators.

The number of sex workers working at a licensed brothel or escort agency in Victoria is not known. Apart from small owner-operators, the BLA does not collect information about individual sex workers.

### The Illegal Industry

There is no reliable estimate of the scale of the illegal sex work industry in Victoria. Estimates of illegal brothels in a 2009 research paper ranged from 7 (according to regulatory and enforcement officers) to 40 (according to sex workers themselves), while estimates of the number of people that engaged in illegal private work (including private escort work) ranged from 100 to 450.<sup>21</sup> This wide range of estimates reflects the lack of verifiable evidence, the fluidity of the illegal industry and the general ease with which workers move between the legal and illegal sectors.

While history shows that demand for sex services is fairly inelastic to changes in personal income, cheaper alternatives such as adult matchmaking sites and pornography will continue to compete with the sex work industry. As such, the industry is generally regarded as being in the mature stage of its life cycle and even in decline<sup>22</sup>.

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<sup>20</sup> Information from Consumer Affairs Victoria

<sup>21</sup> Pickering, S., Maher, J., & Gerard, A. (2009) *Working in Victorian Brothels*. Consumer Affairs Victoria.

<sup>22</sup> Shulman, C. (2013). *IBISWorld Industry Report – Brothel Keeping and Prostitution Services in Australia*.



## 2.2.3 Victoria in a national context

It is estimated that 34% of Australian legal sex work transactions are located in Victoria, the second highest proportion behind New South Wales, with 40% of businesses<sup>23</sup>. However, sex work laws vary between states as summarised in the following table. A comparison between licence costs is also provided as a proxy for regulatory structures and cost recovery principles. This comparison, and commentary, is to provide information to the reader about other regulatory and licensing environments in Australia.

Table 3: Summary of sex work laws across Australia

State/Territory	Sex Work Status	Governing Legislation	Licence costs and comparison.
Victoria	Legalised, licensed.	<i>Sex Work Act 1994</i>	Regulatory regime in place in some form for 20 years. Fees charged for licensees and brothel managers. <ul style="list-style-type: none"> <li>New application: <ul style="list-style-type: none"> <li>Escort: \$2,197</li> <li>Brothel and Brothel and Escort: \$4,393.</li> </ul> </li> <li>Renewals for all businesses is currently \$2,510</li> </ul> <p><i>A full list of fees and fee levels is provided in Section 0.</i>  <i>Full cost recovery of the regulatory scheme in Victoria is not achieved.</i></p>
Queensland	Legalised, licensed.	<i>Prostitution Act 1999</i>	Queensland operates a comparable regulatory regime to Victoria with licensees, regulatory requirements and enforcement and compliance undertaken by the State Government. <i>Fee levels are:</i> <ul style="list-style-type: none"> <li>Application fee per person of \$6,480 Plus license fee of \$8,441</li> <li>Annual return fee per person of \$4,122</li> <li>Annual fee of \$8,441.</li> </ul> <p>A licence expires after 3 years; renewal fees are same as application fees. Escort agencies are illegal.  <i>Fees are significantly more than Victoria.</i></p>
New South Wales	Decriminalised, unlicensed. <i>Sex Work Regulation Inquiry</i> currently underway to investigate options for regulation.	<i>Summary Offences Act 1988</i>	Sex work is currently decriminalised in NSW. There is no licensing or registration system. Local councils determine planning applications for brothels and decide the number and location of brothels in their area. Escorts are unregulated. <p>The NSW Government has committed to improving brothel regulation. A DPC review (currently being finalised) is considering possible regulatory frameworks in the context of sex work remaining legal. An issues paper released in 2012 sought comment from stakeholders and identified 3 reform options:</p> <ol style="list-style-type: none"> <li>(1) Improve the current regulatory system, including planning decisions &amp; information-sharing between regulators. This option might also be relevant for adoption as part of options (2) or (3).</li> <li>(2) A registration system for owners and operators.</li> <li>(3) A licensing system for owners and operators.</li> </ol> <p><i>Currently there are no fees for new applications of renewals.</i></p>
South Australia	Illegal in all forms.	<i>Summary Offences Act 1953</i> <i>Criminal Law Consolidation Act (1935 – 1976)</i>	A Private Member's Bill to decriminalise sex work, the Statutes Amendment (Decriminalisation of Sex Work) Bill 2013 was introduced and second-read in May 2013. Debate was adjourned.
Western Australia	Brothels are illegal but traditionally, laws not fully enforced.	<i>Prostitution Act 2000, Criminal Code</i>	Brothels with more than one sex worker are illegal. Escort agencies are not illegal. <p>In late 2011, the WA Government introduced a Bill to prohibit all forms of sex work from residential areas and limit the number of permitted brothels to a small number of areas. A strict licensing scheme was proposed for brothel operators and managers and self-employed sex workers. The Bill does not appear to have progressed beyond Second Reading in the Assembly.</p>
Tasmania	Brothels illegal, sole operators' legal.	<i>Sex Industry Offences Act 2005</i>	Brothels are illegal. It is illegal for a person to employ or otherwise control or profit from the work of individual sex workers; however, two sex workers may work together in a partnership arrangement, provided neither controls or manages the other.

<sup>23</sup> Shulman, C. (2013). *IBISWorld Industry Report – Brothel Keeping and Prostitution Services in Australia*

			<p>A Bill was introduced in late 2011 to prohibit sex work in residential areas and to licence brothels and limit them to a small number of areas. The Bill did not progress beyond a second reading.</p> <p>In 2012, the Tasmania Government released a discussion paper inviting comment on whether other legislative models, or elements from other legislative models, are suitable for Tasmania.</p>
Australian Capital Territory	Decriminalised, brothels and escort agencies registered	<i>Prostitution Act 1992</i>	<p>Fee applies to both brothels and escorts agencies. Initial fee is a pro rata of the annual fee depending on the lodgment date. Application fee is \$281 while Renewal fee is \$141.</p> <p><i>Fees are charged however the regulatory regime differs significantly from Victoria.</i></p>
Northern Territory	Brothels and street work illegal, sole operators unregulated. Escort agencies licensed.	<i>Prostitution Regulation Act 2004</i>	<p>Brothels are illegal. Fees are for an Escort Operator or Manager's Licence. Includes fee for police checks. A licence expires after 3 years; the renewal fee is effectively an annual fee.</p> <p>Fees differ for individuals and business. For new applications and renewals:</p> <ul style="list-style-type: none"> <li>• Individual: \$483</li> <li>• Corporate: \$1,207</li> </ul> <p>An additional \$94 (individual) or \$120 (corporate) is required for a business name.</p> <p><i>Fees are charged however the regulatory regime differs significantly from Victoria.</i></p>

Source: IBISWorld, Scarlet Alliance

## 2.3 The problem – setting appropriate fees

The problems covered by the *Fees Regulations* and this RIS relate to ensuring that the costs of administering the *Act* align with the revenue generated for the Sex Work Regulation Fund and the objectives of the regulations.

There are two main considerations which need to be balanced against each other in determining the appropriate form of cost recovery<sup>24</sup>:

- Efficiency – that the processes and resource allocation underlying the administration of the *Act* are efficient
- Equity – the costs are appropriately born by those who accrue the benefits.

Current fee levels under the *Fees Regulations* were prescribed in 2004, based on sex work licensing activities at that time. Cost recovery was not achieved from the outset, and moreover, the nature of licensing the sex work industry has changed.

In the intervening ten years, the regulatory environment has not remained static. Changes to the *Sex Work Act 1994* over time have improved the integrity of the scheme and brought more rigour to a range of processes, with correspondent increases in regulatory effort.

For example:

- Amendments made in 2008 introduced a requirement for licensees to exercise effective control over their businesses, including giving regular and substantial attendance and making provision for arrangements to notify the BLA when the licensee is absent and applying to the BLA to approve and permit another person to manage the business for a specified period
- A shift to annual statements for small owner operators in 2010, aimed at maintaining the currency of the register, requires that small owner-operators submit an annual form to the BLA, to indicate an intention to remain on the register and claim the exemption from being licensed
- The 2010 amendments also introduced the issuing and mandatory carrying of photo identity cards by licensees and brothel managers, resulting in costs to collect the information for the cards, produce the cards and check them at brothel inspections
- Amendments in 2011 changed the circumstances in which the BLA must refuse a licence application to rule out applicants who have ever been convicted of or found guilty of a disqualifying offence that renders the grant of a licence against the public interest (previously it had to be within the last five years and there was no public interest test).

<sup>24</sup> Government of Victoria (2013) *Cost Recovery Guidelines*, Department of Treasury and Finance, Melbourne.

The last decade has also seen increased government and community focus on crimes occurring in the sex work industry. In particular, the issue of people trafficking and sexual slavery has become much more prominent in the ten years since the regulations were last made, with Victorian and Federal Parliamentary inquiries (in 2010 and 2013 respectively), and the significant legal case of Wei Tang (*The Queen v Tang* [2008] HCA 39). The Wei Tang case related to the owner of a licensed Victorian brothel owner who had "purchased" five Thai women to work in her brothel as sex workers, and resulted in Australia's first ever conviction for slavery. The brothel was originally raided in 2003 and Tang first convicted in 2006, but legal proceedings played out over several years before the High Court finally upheld her conviction for slavery in August 2008.

Greater awareness of and responsiveness to the risk of sex trafficking and sexual servitude in licensed brothels has resulted in greater regulatory effort. For example, the Sex Work Regulations 2006 were amended in 2010 to prescribe signage targeting sexual slavery for display in brothels. The signs explain the indicators of the crime and advise where victims can get help. In 2013, these regulations were further amended to clarify the wording and size of the signage and its translations, and add to the locations where it must be displayed. CAV is responsible for developing the signs, procuring translations in five languages, printing and distributing the signs and checking compliance with the display requirement.

Like sex trafficking, other emerging issues such as increased policing efforts in relation to organised crime have also affected the sensitivities around applications and approvals and the rigour applied by the BLA.

Changing demographics, too, can affect regulatory effort. For example, anecdotally, CAV has noted an increase in the number of brothel manager approval applicants who are international students. Checking the probity of foreign nationals working in Australia with visas involves additional activity, for example, obtaining letters and payment records from an applicant's educational institution to verify that student visa requirements are being met.

As a result, the current costs of administering the *Act* have changed over time, and continue to exceed the revenue.

## 2.4 Size of the problem

Presently, the costs of effective administration of the *Act* greatly exceed the revenue. Based on recent discussions with the BLA and CAV, it is expected that in 2013/14, the cost of the sex work service provider and brothel manager scheme will be \$1,664,086 compared to \$899,560 in revenue. This equates to 54% cost recovery. More details regarding costs and revenue generation are contained in this section.

## 2.5 Costs of administering the *Act*

EY was engaged by CAV in 2012 to conduct a full cost analysis of its sex work licensing scheme in 2011/12. These costs have been updated based on recent operational changes to estimate the current costs of the sex work scheme. It is assumed that the cost estimates are accurate for the current 2013/14 financial year. A breakdown of cost estimates are presented below.

Since the 2011/12 estimate CAV and the BLA have focused on changing various structure and procedures. These were:

- A downsizing of the BLA from 4 FTE to approximately 1.2 FTE
- Structural changes to the Sex Work Team
- Decreasing the time taken to process applications and renewals by:
  - The progressive roll-out of electronic application and renewal forms. This eliminates the need for the CAV licensing team to manually enter an applicant's details
  - Streamlining brothel manager application processes.

The reduction in FTE due to process improvements has helped reduce costs. However, efficiency improvements have not led to a large reduction in overall costs. This is because the time that would have been spent on these activities has been allocated elsewhere, for example to activities which do not generate fees, such as increased work related to annualising the processing of registrations for small owner-operators.

### 2.5.1 Current costs

As regulators, CAV and the BLA must ensure that those applying for sex work licences and brothel manager approvals fulfil the requirements of the *Act*. Costs of administering the sex work schemes broadly fall into three categories:

- Licensing staff and BLA costs
- Distributable CAV costs
- Out-of-pocket costs.

#### Licensing staff and BLA costs

These costs relate to staff within the CAV Licensing Branch and the BLA that are directly involved in the sex work schemes. The table below summarises the current staffing levels:

**Table 4: Estimated staff numbers in CAV's Licensing Division and BLA, 2013/14**

Staff Rank	Sex Work Team	Brothel Manager Team	CAV General Licensing	BLA	Total
VPS 2	0	2	1	0	3
VPS 3	2	0	1	0	3
VPS 4	0.5	0.5	1	0	2
VPS 5	0	0	1	0	1
VPS 6/BLA Registrar	0	0	1	0.2	1.2
BLA Member	0	0	0	1	1
<b>Total FTE</b>	<b>2.5</b>	<b>2.5</b>	<b>5</b>	<b>1.2</b>	<b>11.2</b>

CAV General and the BLA staff numbers have been allocated to each scheme based on the amount of time spent licensing each scheme.

Average base salaries have been used to estimate licensing staff and BLA costs. Additionally, indirect costs of \$28,900 per employee have been applied. The indirect costs include the administrative cost per employee, as per the Department of Treasury and Finance (DTF) costing guidelines 2012/13 which includes general supplies and consumables such as printing, stationery, office administration, training, IT usage and licences and rent, which was estimated by the CAV Corporate Resource Team.

An on-cost ratio of 22.5% has also been applied as per DTF Costing Guidelines 2012-13 which covers leaving loading, payroll tax, long service leave, workcover, allowances/penalties and superannuation.

The following table summarises the licensing staff costs.

**Table 5: Licensing staff costs**

Licensing Scheme	CAV	BLA	Total
Sex Work Service Providers	\$334,694	\$158,512	\$493,205
Brothel Managers	\$293,826	\$11,607	\$305,433
<b>Total</b>	<b>\$628,520</b>	<b>\$170,118</b>	<b>\$798,638</b>

Licensing staff costs and the BLA can be divided into two groups:

- *Activity-based costs* – specifically relating to activities associated with applications and annual renewals
- *Other Licensing Division and BLA costs* – those not specifically related to applications and renewals and which do not generate fee revenue. These include processing refunds, undertaking training, registering sex worker exemptions (small owner-operators) etc. These costs are treated as the difference between total Licensing Division and BLA staff costs and direct activity-based costs.

#### Distributable CAV costs

Distributable costs refer to costs incurred by other parts of CAV that may relate to regulatory activities. Estimates have been based on a pro rata FTE estimate of how much time individuals spend on the sex work scheme. These activities include:

- Planning, monitoring and assessment
- Dispute resolution and reduction
- Trader conduct

- Enforcement (of the legal sector only)<sup>25</sup>
- Legal services
- State-wide service delivery
- Corporate Resources Division
- Service Delivery Division
- Policy and Legislation (relating specifically to the sex work industry).

Although CAV has undergone reductions in staff FTE, the staff time and resources allocated to the sex work scheme has not diminished as a result, because regulatory demands have not diminished. The same distributable cost base is estimated through the costs allocated to the Sex Work Regulation Fund.

Table 6: Allocation of CAV Distributable Costs

Licensing Scheme	Distributable Cost Allocation
Sex Work Service Providers	\$501,882
Brothel Managers	\$310,806
<b>Total</b>	<b>\$812,688</b>

### Out-of-pocket costs

Out-of-pocket costs are incurred directly as a result of licensing activities. These relate to checking activities that are necessary to assess the suitability of an applicant for a licence as well as the costs of public notices. These costs are summarised in the following table.

Table 7: Out-of-pocket costs

Item	Description	Cost per item
Crimtrac check	Police check for applicant and identified associates	\$23.00
VEDA	Financial check for applicant	\$42.70
Individual associate check (VEDA)	Financial check for identified associates (generally between 2-5 per applicant)	\$20.39
Bankruptcy Check	Only for around 1% of applicants	\$15.66
ASIC Company Extract	Current and historical company extract	\$22.88
The Age Publication	Public notice in the Age Newspaper. These are published 5 times a year at \$2000 per publication, divided by assumed volume of 16 annual applicants.	\$625.00
Photo ID + Courier	Cost of ID card	\$5.50

In 2012/13, out-of-pocket costs totalled to \$52,760. It is assumed out of pocket expenses for 2013/14 will match this figure.

### Total costs

The following table summarises the estimated costs of administering the *Act*. It is assumed that this cost will increase by 2.5% per annum through a combination of wage growth and CPI.

Table 8: Cost summary

Cost Type	2013/14 cost	Proportion	Anticipated 2014/15 cost (2.5% growth)
Licensing staff and BLA costs	\$798,638	48.0%	\$818,604
Distributable CAV costs	\$812,688	48.8%	\$833,005
Out-of-pocket costs	\$52,760	3.2%	\$54,079
<b>Total</b>	<b>\$1,664,086</b>	<b>100.0%</b>	<b>\$1,705,688</b>

<sup>25</sup> In 2011, the Victorian Coalition Government introduced new laws into Parliament to make Victoria Police the lead agency for the enforcement of laws relating to the sex work industry and to reduce unlawful conduct.

## Enforcement against illegal operations

Prior to the legislative reforms in 2011 (which commenced in March 2012), both CAV and Victoria Police had enforcement responsibilities for the offences in the *Sex Work Act 1994* relating to carrying on businesses as a sex work service provider without a valid licence.

Making Victoria Police solely responsible for unlicensed sex work relieved CAV of some of its enforcement activities (CAV is no longer involved in surveillance of or raids on suspected illegal brothels, for example), but CAV still collaborates with and supports police efforts. To assist with the transition, CAV continued to maintain an illegal brothel hotline for reporting illegal brothels, for some time after the changes in responsibilities, and will still accept and refer any intelligence received to Victoria Police. CAV also assists with Victoria Police enquiries into suspects by providing confirmation, for example, that the person is not licensed.

Following the reforms, CAV retained the power to bring proceedings for offences relating to the licensing scheme. CAV continues to inspect and undertake enforcement activities in respect of the legal industry, and its licensing activities, in support of the BLA, remain unchanged.

The cost estimates provided above do not include prior responsibilities now transferred to Victoria Police. All other activities have been costed.

## 2.6 Current fees and revenue generation

### 2.6.1 Current fee structure

Fees levied under the *Fees Regulations* are outlined in the following table.

Table 9: Fee categories under the *Act*

Fee type	Description	Section of the <i>Act</i>
<b>Sex Work Service Providers</b>		
New Applications		
Escort Agency Only	The application fee for a licence to carry on business as a sex work service provider in an escort agency only, brothel only or escort agency and brothel.	33 (2) (d) (i)
Brothel Only		
Escort Agency + Brothel		
Annual Licence fees (all)	Annual licence fee	33 (2) (d) (ia)
Late Fees	Late payment fee	46B
Extension of Time	Extension on fee payment	46C
Additional Room	Fee per additional room if more than one room is being used for sex work. Paid by brothel and combined brothel and escort businesses. The maximum number of rooms for new brothels is six, however brothels established before the introduction of the six-room limit were permitted to maintain their existing number of rooms. This can be up to 18 rooms.	33 (2) (d) (ii)
Additional Telephone number	Fee per telephone number if more than one number is being used in carrying on business. Paid by escort agencies and combined brothel and escort businesses.	33 (2) (d) (ii)
Additional Business name	Fee per business name if more than one name is being used in carrying on business. Paid by all businesses (brothel only, escort agency only and combined brothel and escort businesses).	33 (2) (d) (ii)
<b>Brothel Managers</b>		
New Applications	The application fee for the approval as a manager of a sex work service providing business.	50 (2)
3-Year Renewals	3-yearly renewal fee.	50 (2)

There are various licensing activities which require staff time to process and regulate but do not generate fee revenue for the Fund. These include:

- Processing small owner-operator registrations

- Variations to a licence such as the addition of a new business partner, addition of a brothel or escort agency to a licence, or a change in premises, known as Section 40 variations
- Assisting members of the public to inspect the register of sex work service providers
- Processing applications by brothel managers to continue working despite being insolvent.

Even though no fee is currently charged for the latter three of the above activities, the *Act* provides the capacity to make regulations to prescribe a fee. In particular, the time-heavy nature of processing Section 40 variations warrants the potential to charge a fee going forward and this is examined in Section 4.

## 2.6.2 Current fees charged and revenue generated

The following table summarises the current fees charged under the *Sex Work (Fees) Regulations 2004* and the expected revenue generated. In 2013/14, it is expected that revenue into the Fund will be \$921,906. The estimated number of annual licence renewals is greater than the current 139 businesses. This is due to the requirement for new business to pay the first annual fee when applying for a licence.

Table 10: Current fees under the sex work schemes

Item	Fee (2013/14)	Expected volume (2013/14)	Expected revenue (2013/14)
<b>Sex Work Service Providers</b>			
New Applications			
Escort Agency Only	\$2,197	2	\$4,393
Brothel Only	\$4,393	6	\$26,357
Escort Agency + Brothel	\$4,393	10	\$43,929
Annual Licence Renewals			
Escort Agency Only	\$2,510	18	\$45,184
Brothel Only	\$2,510	53	\$133,041
Escort Agency + Brothel	\$2,510	87	\$218,387
Late Fees	\$377	9	\$3,389
Extension of Time	\$188	2	\$376
Additional Room	\$471	606	\$271,123
Additional Telephone number	\$471	120	\$41,422
Additional Business name	\$471	77	\$20,240
<i>Total Sex Work Service Providers</i>			<i>\$807,842</i>
<b>Brothel Managers</b>			
New Applications	\$326	187	\$61,563
3-Year Licence Renewals	\$326	94	\$31,449
<i>Total Brothel Managers</i>			<i>\$91,718</i>
<b>Total Sex Work Schemes</b>			<b>\$899,049</b>

## 2.7 Overall cost recovery

In total, it is expected that sex work schemes will generate \$899,049 in revenue in 2013/14, contrasting with \$1,664,086 in costs, or 54% cost recovery.

While this is an improvement on 2011/12 through efficiencies, CAV still under-recovers its costs of licensing the sex work industry.

Table 11: Costs and revenue of the sex work licence schemes (2012/13)

Licensing Scheme	2012/13		
	Total Costs	Total Revenue	Cost Recovery
Sex Work Service Providers	\$1,021,471	\$807,842	79.1%
Brothel Managers	\$642,615	\$91,718	14.3%
<b>Total</b>	<b>\$1,664,086</b>	<b>\$899,049</b>	<b>54.0%</b>

## 2.8 The risk of non-intervention

Presently, the cost of regulating the sex work industry is not being fully recovered. Should this continue, the following consequences may result:

- Continued pressure to cut the costs of administering the *Act*. CAV and the BLA are obligated by law and community expectations to examine thoroughly the suitability of sex work service providers and brothel managers. Further reducing resources may compromise their ability to do so. Additionally, ensuring industry probity comes at a cost and reducing regulatory effort in this area may result in higher levels of illegal activity
- The primary beneficiaries from sex work regulation (that is, sex work industry participants, who are authorised to do something that would otherwise be illegal) being too heavily subsidised by other licensing schemes and other parts of CAV. This contradicts general government objectives of equitable cost recovery
- Cost recovery continues to be inefficient. The value placed on licences and other items does not equal the cost of resources required to regulate the industry (CAV and BLA costs) due to inappropriate market signals.



## 3. Objectives of the proposed Regulations

### Summary

- The objective of the proposed Regulations is to set fees that appropriately reflect the costs of administering the *Act*
- General government policy is to ensure that full cost recovery is achieved where possible. Other considerations when setting fees are the efficiency, effectiveness and equity of the fee level. Fees should also be simple and easily understood.

### 3.1 The objectives

The Government's objectives (through various regulations governing the sex work industry) are to:

- Minimise the harms associated with sex work by protecting children from the industry
- Lessen the impact of the industry on the community and community amenity
- Maintain high standards of industry probity to ensure criminals are not involved in the industry
- Protect the health and safety of those who engage in sex work, including minimising health risks for workers and their clients and protecting workers from exploitation and violence.

The objective of the new *Fee Regulations* is to set fees which appropriately reflect the costs borne by CAV and the BLA in administering the *Act*. The proposed fees will take into account changes to licensing the sex work industry since 2004 and the overall objectives of regulating sex work.

### 3.2 Cost recovery

#### 3.2.1 Base Case

Under the base case i.e. 'do nothing' scenario, no action would be taken once the current fees expire on 26 October 2014. Hence, no fees would be charged beyond 2014 and as a result, none of the costs of regulating the Victorian sex work industry would be recovered.

The continued net deficit of the Fund would be unsustainable, leading to a diminished ability of CAV and the BLA to fulfil their legislative obligations. Any benefits to the community from regulating the licensed sector would be reduced or lost.

#### 3.2.2 Cost recovery principles

Guidelines for cost recovery are laid out in the Victorian Department of Treasury and Finance's *Cost Recovery Guidelines*<sup>26</sup>. The Guidelines establish a whole-of-government framework for ensuring that cost recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and government policy.

General government policy is that regulatory fees and user charges should be set on a full cost recovery basis because it ensures that both efficiency and equity objectives are met. Full cost represents the value of all the resources used or consumed in the provision of an output or activity.

The *Cost Recovery Guidelines* also outline the circumstances under which *partial* cost recovery may be justified:

- Where merit goods are being provided or where activities generate benefits to unrelated third parties
- Where objectives of income redistribution or social insurance are important
- Where concessions are deemed appropriate
- Where full cost recovery may undermine innovation and product development
- Where the government is providing goods and services on a commercial basis in competition with the private sector
- Where full cost recovery could undermine other objectives.

<sup>26</sup> Government of Victoria (2013) *Cost Recovery Guidelines*, Department of Treasury and Finance, Melbourne.

In assessing what level of fee recovery is appropriate, it is important to recognise that fees should not discourage compliance.

The options analysis explores and assesses different levels of cost recovery against:

- Efficiency: The extent to which all costs are recovered (including the extent to which fixed costs are recovered over an optimal recovery period)
- Equity: The ability of businesses to pay (and removal of barriers for small business)
- Effectiveness: The effect on compliance
- Simplicity: The ease with which the fee structure and items are understood.

### 3.3 Reasons for preparing a RIS

A RIS forms an important part of the regulatory development process as it ensures that regulation is only implemented where there is a justified need. In relation to replacing sunseting regulations, it is important to demonstrate clearly that the Regulations are still required, whether in the same or altered form.

### 3.4 Authorising legislation

Section 68(f) of the *Act* states that the Governor in Council may make regulations for or with respect to prescribing fees.

## 4. Identified options

### Summary

- Due to changes in operating conditions in the industry, a range of options were considered including the elimination of some fee items and inclusion of others
- After consideration of alternative fee structure, five regulatory options were analysed in detail:
  - Option 1: Base Case (no fees)
  - Option 2: Retain Current Fee Structure (at current fee levels)
  - Option 3: Retain Current Fee Structure (at full cost recovery levels)
  - Option 4: Remove Fee for Telephone Numbers and add fee items (section 40, insolvent managers and register inspection) at 100% cost recovery
  - Option 5: Remove Fee for Telephone Numbers and add fee items (section 40, insolvent managers and register inspection) at 70% cost recovery.

### 4.1 Initial options development

#### 4.1.1 Factors for consideration

Since the 2004 *Fees Regulations*, operating in the sex work industry has changed. As a result, it was decided that alternative fee structures be investigated to determine the appropriateness of the current fee structure and fee items. The initial options that were developed contained some or all of the following features which reflect the changes in regulating sex work:

- *Eliminating certain items due to their gradual obsolescence* – the rise of social media, smart phones and other technological avenues has meant that charging for additional telephone numbers may not fully capture the extent of these activities.
- *New fee for Section 40 variations* – no fee is currently charged for these items despite them being resource and time-heavy, for example adding a new business partner or a change in premises for a brothel
- *New fee for insolvency permission* – no fee is currently charged for an application to continue working as a brothel manager despite being insolvent
- *New fee for inspection of register* – no fee is currently charged to inspect the register of licensees
- *Phased increase in fee increases* – the size of the fee increase should be taken into account when considering whether a one-off or three-year phased fee increase is more appropriate for licensees.

#### 4.1.2 Initial options

Four options were initially developed in order to investigate full cost recovery of the sex work licensing scheme and the required fee increases under different fee structures. These are summarised in the following table, along with the rationale for them being eliminated or brought forward for further analysis.

Table 12: Initial options developed

Initial Option	Description	Approximate increase across fee items to achieve full cost recovery (from expected 2014/15 fees)	Brought Forward?
Initial Option 1	<ul style="list-style-type: none"> <li>• Retain current fee structure and fee types with across-the-board fee increases</li> </ul>	85%	Yes – for comparative purposes

Initial Option 2	<ul style="list-style-type: none"> <li>Eliminate fees for additional business names and additional telephone numbers, for escort agencies</li> <li>Introduce fee for Section 40s</li> <li>Annualise brothel manager licences</li> </ul>	96%	No – eliminating additional business names and telephone numbers removes the ability to charge escort agencies by size; annualising brothel manager licences requires legislative change
Initial Option 3	<ul style="list-style-type: none"> <li>Eliminate fees for additional telephone numbers</li> <li>Introduce fee for Section 40s</li> </ul>	91%	Yes – identified as a feasible option as it allows businesses to still be charged by size but does not impose additional regulatory burden
Initial Option 4	<ul style="list-style-type: none"> <li>All fees for additional items removed and escort agencies and brothels charged by business size <ul style="list-style-type: none"> <li>Escort agencies – small (1-5 business names) and large (&gt;5 business names)</li> <li>Brothels – small (1-3 rooms), medium (4-6 rooms) and large (&gt;6 rooms)</li> <li>Different price differentials between business size categories examined: 20%, 50% and 100%</li> </ul> </li> <li>Introduce fee for Section 40s</li> <li>Annualise brothel manager licences</li> </ul>	Varies	No – given the single flat fee for large businesses, the largest escort agencies and brothels would stand to gain at the expense of small businesses. Further, there is incentive for licensees to understate the size of their businesses and moreover this option may create undue regulatory burden.

As a result, Initial Options 1 and 3 are brought forward for further consideration in this RIS at different levels of cost recovery. Due to the significant increase required to achieve cost recovery (and the subsequent impact on the industry) it is recommended that cost recovery be phased in over a three year period.

## 4.2 Options considered in this RIS

This RIS considers five regulatory options:

- Option 1: Base Case (no fees)
- Option 2: Retain Current Fee Structure (at current fee levels)
- Option 3: Retain Current Fee Structure (at full cost recovery levels)
- Option 4: Remove Fee for Telephone Numbers and add fee items (section 40, insolvent managers and register inspection) at 100% cost recovery
- Option 5: Remove Fee for Telephone Numbers and add section 40 (section 40, insolvent managers and register inspection) at 70% cost recovery.

These options are described in greater detail below. Note that fees will be expressed in fee units in the Fee Regulations. Dollar values are presented in the RIS for ease of comparison and understanding.

### 4.2.1 Option 1: Base Case (no fees)

The 'do nothing' base case option has been retained for comparative purposes. Under this scenario, no action would be taken once the current fees sunset. Hence, no fees would be charged beyond 2014 and as a result, none of the costs of regulating the Victorian sex work industry would be recovered.

### 4.2.2 Option 2: Retain Current Fee Structure (at current fee levels)

Under Option 2, the fee structure and level will remain the same (assuming a 2.5% increase, based on the Treasurer's annual increase of fee unit and penalty unit values under the *Monetary Units Act 2004*, which since 2004-05 has averaged 2.56%). As such, Option 2 is summarised as:

- Maintaining current fee types and structures
- Maintaining current fee levels (with an estimated 2.5% increase)
- Partial cost recovery.

Fee structure and levels are summarised below.

Table 13: Current fee structure (at current levels)

Item	Volume	2013/14 fees	2014/15 fees (Option 2)	Anticipated revenue
<b>Sex Work Service Providers</b>				
New Applications				
<i>Escort Agency Only</i>	2	\$2,196.50	\$2,251.40	\$4,503
<i>Brothel Only</i>	6	\$4,392.90	\$4,502.70	\$27,016
<i>Escort + Brothel</i>	10	\$4,392.90	\$4,502.70	\$45,027
Licence Renewals (all)				
<i>Escort Agency Only</i>	18	\$2,510.20	\$2,573.00	\$46,313
<i>Brothel Only</i>	53	\$2,510.20	\$2,573.00	\$136,367
<i>Escort + Brothel</i>	87	\$2,510.20	\$2,573.00	\$223,847
Late Fees	9	\$376.60	\$386.00	\$3,474
Extension Time	2	\$188.20	\$192.90	\$386
Additional Room	576	\$470.70	\$482.50	\$277,901
Add. Telephone no.	88	\$470.70	\$482.50	\$42,457
Add. Business name	43	\$470.70	\$482.50	\$20,746
Section 40 application	10	\$0.00	\$0.00	\$0.00
<b>Brothel Managers</b>				
New Applications	187	\$326.40	\$334.60	\$62,563
Renewals (3 year)	94	\$326.40	\$334.60	\$31,449
<b>Total</b>				<b>\$922,049</b>
<b>Cost of regulating</b>				<b>\$1,705,688</b>
<b>Cost recovery</b>				<b>54%</b>

### 4.2.3 Option 3: Retain Current Fee Structure (at full cost recovery levels)

Under Option 3, an across-the-board fee increase will be applied to all items in both schemes in order to achieve full cost recovery. As such, Option 3 is summarised as:

- Maintaining current fee types and structures
- Consistent across-the-board fee increases for all items across both schemes
- Full cost recovery for both schemes.

From the current fees level (inflated to 2014/15 levels), there is an 85% increase on all fee items. The fee structure and levels are summarised below.

Table 14: Current fee structure (at full cost recovery levels)

Item	Volume	2014/15 fees (Option 2)	2014/15 fees (Option 3)	Anticipated revenue
<b>Sex Work Service Providers</b>				
New Applications				
<i>Escort Agency Only</i>	2	\$2,251.40	\$4,164.90	\$8,330
<i>Brothel Only</i>	6	\$4,502.70	\$8,329.50	\$49,977
<i>Escort + Brothel</i>	10	\$4,502.70	\$8,329.50	\$83,295
Licence Renewals (all)				
<i>Escort Agency Only</i>	18	\$2,573.00	\$4,759.70	\$85,674
<i>Brothel Only</i>	53	\$2,573.00	\$4,759.70	\$252,263
<i>Escort + Brothel</i>	87	\$2,573.00	\$4,759.70	\$414,092
Late Fees	9	\$386.00	\$714.10	\$6,427
Extension Time	2	\$192.90	\$356.90	\$714
Additional Room	576	\$482.50	\$892.50	\$514,086
Add. Telephone no.	88	\$482.50	\$892.50	\$78,541

Add. Business name	43	\$482.50	\$892.50	\$38,378
Section 40 application	10	\$0.00	\$0.00	\$0.00
<b>Brothel Managers</b>				
New Applications	187	\$334.60	\$618.90	\$115,734
Renewals (3 year)	94	\$334.60	\$618.90	\$58,176
<b>Total</b>				<b>\$1,705,688</b>
<b>Cost of regulating</b>				<b>\$1,705,688</b>
<b>Cost recovery</b>				<b>100%</b>

#### 4.2.4 Option 4: Remove Fee for Telephone Numbers and add fee items (section 40, insolvent managers and register inspection) at 100% cost recovery

Option 4 removes a fee for telephone numbers but maintains a fee for business names. As such, Option 4 is summarised as:

- Elimination of fee for additional telephone numbers
- Base fee for licensees plus the payment of additional rooms and business names
- Introduction of a fee for Section 40 variations at 25% of current average cost
- Introduction of a fee for brothel manager operating insolvent at 25% of current average cost
- Introduction of a fee to inspect the register at full cost recovery
- Consistent across-the board fee increases for relevant items across both schemes
- Full cost recovery for both schemes.

The 25% level for new fees was chosen as industry participants would be unlikely to make important disclosures (eg that they are insolvent, or that they are moving premises) if they were charged at cost recovery. Realistically, these fees need to be proportionate to the cost of other fees. For example, a licence variation could cost as much as the initial application itself; an insolvency permission fee could cost more than the initial approval. If these were pitched at cost recovery, it may be more practical to surrender the licence or approval and re-apply than to change it.

From the current fees level (inflated to 2014/15 levels), there is a 91% increase on fee items. The Fee structure and levels are summarised below.

Table 15: Option 4 fee structure (at full cost recovery levels)

Item	Volume	2014/15 fees (Option 2)	2014/15 fees (Option 4)	Anticipated revenue
<b>Sex Work Service Providers</b>				
New Applications				
<i>Escort Agency Only</i>	2	\$2,251.40	\$4,306.10	\$8,612
<i>Brothel Only</i>	6	\$4,502.70	\$8,611.90	\$51,671
<i>Escort + Brothel</i>	10	\$4,502.70	\$8,611.90	\$86,119
Licence Renewals (all)				
<i>Escort Agency Only</i>	18	\$2,573.00	\$4,921.00	\$88,579
<i>Brothel Only</i>	53	\$2,573.00	\$4,921.00	\$260,815
<i>Escort + Brothel</i>	87	\$2,573.00	\$4,921.00	\$428,130
Late Fees	9	\$386.00	\$738.30	\$6,645
Extension Time	2	\$192.90	\$369.00	\$738
Additional Room	576	\$482.50	\$922.80	\$531,515
Add. Telephone no.	88	\$482.50		
Add. Business name	43	\$482.50	\$922.80	\$39,679
Section 40 application	10	\$0.00	\$2,155.10	\$21,551
Inspect the register	30	\$0.00	\$50.00	\$1,500
<b>Brothel Managers</b>				
New Applications	187	\$334.60	\$639.90	\$119,658

Item	Volume	2014/15 fees (Option 2)	2014/15 fees (Option 4)	Anticipated revenue
Renewals (3 year)	94	\$334.60	\$639.90	\$60,149
Operate insolvent	2	\$0	\$164.00	\$328
<b>Total</b>				<b>\$1,705,688</b>
<b>Cost of regulating</b>				<b>\$1,705,688</b>
<b>Cost recovery</b>				<b>100%</b>

#### 4.2.5 Option 5: Remove Fee for Telephone Numbers and add fee items (section 40, insolvent managers and register inspection) at 70% cost recovery

The fee structure for Option 5 is the same as Option 4. The difference is that fee levels only recover 70% of the cost of regulating the industry. The level of 70% was chosen based on the need to balance the desire to achieve full cost recovery (based on State Government policy) and risk factors associated with placing significant financial pressure of businesses, resulting in them operating outside the regulated industry.

Consultation with stakeholders indicated profits are already being squeezed due to competition and demand and that significant increases could potentially force a number of business to operate illegally or with lower compliance. The proposed fees under Option 5 were seen as a level that would minimize the potential for businesses to choose to operate unlicensed.

From the current fees level (inflated to 2014/15 levels), there is a 34% increase on fee items. The Fee structure and levels are summarised below.

Table 16: Option 5 fee structure (at 70% cost recovery levels)

Item	Volume	2014/15 fees (Option 2)	2014/15 fees (Option 5)	Anticipated revenue
<b>Sex Work Service Providers</b>				
New Applications				
<i>Escort Agency Only</i>	2	\$2,251.40	\$3,014.20	\$6,028
<i>Brothel Only</i>	6	\$4,502.70	\$6,028.30	\$36,170
<i>Escort + Brothel</i>	10	\$4,502.70	\$6,028.30	\$60,283
Licence Renewals (all)				
<i>Escort Agency Only</i>	18	\$2,573.00	\$3,444.70	\$62,005
<i>Brothel Only</i>	53	\$2,573.00	\$3,444.70	\$182,571
<i>Escort + Brothel</i>	87	\$2,573.00	\$3,444.70	\$299,691
Late Fees	9	\$386.00	\$516.80	\$4,651
Extension Time	2	\$192.90	\$258.30	\$517
Additional Room	576	\$482.50	\$645.90	\$372,060
Add. Telephone no.	88	\$482.50		
Add. Business name	43	\$482.50	\$645.90	\$27,775
Section 40 application	10	\$0.00	\$1,508.50	\$15,085
Inspect the register	30	\$0.00	\$35.00	\$1,050
<b>Brothel Managers</b>				
New Applications	187	\$334.60	\$447.90	\$83,760
Renewals (3 year)	94	\$334.60	\$447.90	\$42,104
Operate insolvent	2	\$0.00	\$114.80	\$230
<b>Total</b>				<b>\$1,193,982</b>
<b>Cost of regulating</b>				<b>\$1,705,688</b>
<b>Cost recovery</b>				<b>70%</b>

## 4.3 Summary of fee options

A summary of each of the fee options is presented below.

Table 17: Fee options

Item	Volume	2014/15 fees Option 1: No fee	2014/15 fees Option 2: Retain current fee structure at current fee levels	2014/15 fees Option 3: Retain current fee structure at full cost recovery levels	2014/15 fees Option 4: Remove fee for telephone numbers and fee items at 100% cost recovery	2014/15 fees Option 5: Remove Fee for Telephone Numbers and add fee items at 70% cost recovery
<b>Sex Work Service Providers</b>						
New Applications						
<i>Escort Agency Only</i>	2	\$0	\$2,251.40	\$4,164.9	\$4,306.10	\$3,014.20
<i>Brothel Only</i>	6	\$0	\$4,502.70	\$8,329.5	\$8,611.90	\$6,028.30
<i>Escort + Brothel</i>	10	\$0	\$4,502.70	\$8,329.5	\$8,611.90	\$6,028.30
Licence Renewals (all)						
<i>Escort Agency Only</i>	18	\$0	\$2,573.00	\$4,759.70	\$4,921.00	\$3,444.70
<i>Brothel Only</i>	53	\$0	\$2,573.00	\$4,759.70	\$4,921.00	\$3,444.70
<i>Escort + Brothel</i>	87	\$0	\$2,573.00	\$4,759.70	\$4,921.00	\$3,444.70
Late Fees	9	\$0	\$386.00	\$714.10	\$738.30	\$516.80
Extension Time	2	\$0	\$192.90	\$356.90	\$369.00	\$258.30
Additional Room	576	\$0	\$482.50	\$892.50	\$922.80	\$645.90
Add. Telephone no.	88	\$0	\$482.50	\$892.50		
Add. Business name	43	\$0	\$482.50	\$892.50	\$922.80	\$645.90
Section 40 application	10	\$0	\$0.00	\$0.00	\$2,155.10	\$1,508.50
Inspect the register	30				\$50.00	\$35.00
<b>Brothel Managers</b>						
New Applications	187	\$0	\$334.60	\$618.90	\$639.90	\$447.90
Renewals (3 year)	94	\$0	\$334.60	\$618.90	\$639.90	\$447.90
Operate insolvent	2				\$164.00	\$114.80
<b>Cost recovery</b>		<b>0%</b>	<b>54%</b>	<b>100%</b>	<b>100%</b>	<b>70%</b>



## 5. Options analysis (costs and benefits)

### Summary

- A multi criteria analysis was undertaken based on the following criteria:
  - Efficiency
  - Equity
  - Effectiveness
  - Simplicity.
- Due to the focus on cost recovery the preferred option is Option 5: Remove Fee for Telephone Numbers and add fee items (section 40, insolvent managers and register inspection) at 70% cost recovery
- Initial consultation with industry has highlighted issues including:
  - Fee increases may put additional pressure on legal businesses already faced with increased competition from illegal operators and small owner-operators
  - There is some lack of understanding on how the illegal sector is policed.

### 5.1 Approach

A multi-criteria analysis (MCA) is a decision making tool that can be used when it is not possible to quantify and value the main costs and benefits of a proposal. MCA involves:

- Specifying assessment criteria
- Assigning a 'weighting' to each criterion
- Assigning scores for each option in relation to each criterion; and
- Calculating a weighted score for each option.

The objective of the proposed fee structure and level is to recover the costs of administering the sex work industry, and to further the Government's broader objectives:

- Efficiency
- Equity
- Effectiveness
- Simplicity.

These objectives, which are described in the objectives discussion (above) and outlined in the table below, are the assessment criteria for the purposes of the MCA.

Table 18: MCA criteria

Criteria	Assessment considerations	Weighting
Efficiency	<p>Incorporating the costs of administering government regulation into the prices of regulated products and services ensures that the costs to the community of the resources used to allow the regulated activity to take place will become apparent to producers and consumers.</p> <p>Factors to be considered:</p> <ul style="list-style-type: none"> <li>• Extent to which fixed costs are recovered over an optimal recovery period</li> <li>• Extent to which costs are recovered</li> </ul>	40%
Equity	<p>Fees are aligned with an individual's ability to pay.</p> <p>When used in a public finance context, equity can have both horizontal and vertical dimensions. In setting fees, horizontal equity (fees are levied based on who directly benefits from the activity) generally aligns with efficiency, and is therefore addressed in the first criterion. This criterion therefore focuses on vertical equity (matching fees to the ability of people to pay). Fees should not create a barrier for smaller businesses to enter the market. The concept of 'vertical equity' provides that fees should be charged with</p>	20%

Criteria	Assessment considerations	Weighting
	some notion of ability to pay.	
Effectiveness	This criterion measures the impact on government policy objectives. Specifically, high fees may have an impact on decisions by businesses to participate in the industry (or operate illegally). Effect on compliance, ie high fees may impact businesses' decisions to participate – where businesses choose not to participate they may operate illegally (jeopardising the objectives of the Regulations).	30%
Simplicity	Fee is easy for the community and businesses to understand.	10%

While all criteria are considered relevant and important for assessing the identified options, the efficiency of the fee levels (ability to recover costs) and their effectiveness on achieving Government objectives have been rated as the most important with higher weightings.

In the MCA each option is given a score, from -10 to +10, against each criterion. The base case (no fee) has a zero score in relation to all criteria. Options are then scored by reference to whether the expected outcome resulting from the option represents a positive or negative change relative to this base case. Each criterion has an equal weighting (25%) so the 'raw' score allocated in accordance with the table below is multiplied by 0.25 to give a 'weighted' score.

## 5.2 Consultation

To support the analysis, consultation was conducted with the Australian Adult Entertainment Industry Inc. (AAEI) and five businesses ranging in size and location.

Key themes to emerge from the consultations that have influenced the analysis are:

- Over the past two to three years there has been increased competition from small owner-operators, resulting in a squeeze on profits
- Prices for services have not increased for several years, putting pressure on businesses
- Businesses are considering cutting costs to ensure ongoing commercial viability
- The number of illegal brothels and escort agencies has grown, increasing the competition with legal businesses
- Illegal brothels do not adhere to the advertising restrictions to which legal businesses are subject; they advertise differently, further restricting the ability for legal businesses to trade on a level playing field
- It is not well understood what CAV, BLA and Victoria Police do with regards to monitoring and enforcement
- Licensees believe they are unfairly dealt with compared with small owner-operators and illegal businesses
- Businesses do not understand what they receive for their annual licence fee.

Several businesses believed that the legal industry would shrink if further price pressures were applied.

Operators and would-be operators in any industry prefer lower to higher fees, for themselves if not for their competitors. At some level of initial and annual payments, some operators will begin to consider whether the cost is worth paying, particularly if there are other options available to them to improve their profit to investment ratio.

Some of those deterred from participation will move on to different pursuits, others may risk operating illegally, and others again may feel justified in paying the fees but reducing compliance with regulations governing their operations in order to cut costs.

It would be a concern if the fee structure artificially promoted a concentration of market power in the sex work industry, leaving a few dominant businesses in an increasingly profitable position. This can be addressed to some extent by structuring the fees such that smaller businesses pay less.

Increased unlicensed operation would be the major concern. The illegal sex work industry presents significant risks including health and safety risks to workers, health risks to clients and, through subsequent contacts, the general community, and the deterioration in neighborhood amenity, including unwanted exposure of children to the practice of sex work.

Any growth in the illegal industry places further pressure on the regulated system, as licensed providers note that others are profiting from the industry without incurring the compliance costs of licensed operation.

Any cutting back on regulatory compliance by licensees to reduce operating costs would compromise the health, safety and security of clients, sex workers and the broader community. To counteract the increase in costs, legal brothels may choose to increase prices for services, however business have indicated that recent competition has resulted in stable prices for two to three years. Taking a larger cut of profits from sex workers may also increase revenue but would drive workers to self-employment.

It is important to balance these concerns with the current cross-subsidisation of the industry by tax payers. It is important to note that when considering these impacts, fee increases will be phased in over a three year period to avoid a significant one year increase.

## 5.2.1 Future consultation

To test these concerns, public comment in response to the RIS and the draft regulations will be received for 28 days following the release of the RIS.

This process will include the following steps:

- A notice about the RIS will be published in a statewide newspaper and the Government Gazette (as per statutory obligations).
- At the same time, the RIS will be uploaded to a dedicated consultation page on the CAV website. The RIS will also be available in hard copy on request to CAV.
- CAV will post a short letter to each current licensee, alerting them to the availability of the RIS.
- CAV will also directly notify several other interested stakeholders, such as peak body, Australian Adult Entertainment Inc. (AAEI).

A consultation period of 28 days will be sufficient under these circumstances.

## 5.3 Analysis of options

Each option has been subject to an assessment based on the level of cost recovery, impact on overall fees for individual businesses and possible impact on business behaviours. These scores are used to identify a preferred option.

### 5.3.1 Option 1: Base Case (no fees)

The base case scores zero across all criteria. This enables the base case to be the point of reference for scores against all other options.

Table 19: Scoring and rationale (Option 2)

Criteria	Weighting	Raw score	Weight score	Assessment rationale
Efficiency	40%	0	0	As a point of comparison for the analysis of all other options, the base case scores for each criterion have been set at 0.
Equity	20%	0	0	
Effectiveness	30%	0	0	
Simplicity	10%	0	0	

### 5.3.2 Option 2: Retain Current Fee Structure (at current fee levels)

While understanding of the current fee structure is high within the industry, Option 2 only recovers just over 50% of costs incurred by the Victorian Government. Factors important in the scoring of Option 2 include:

- Option 2 does not achieve full cost recovery
- Current business performance (and profitability) is being impacted by price competition from small owner-operators and the illegal sector
- No additional funding would be available for additional monitoring and compliance activities.

Table 20: Scoring and rationale (Option 2)

Criteria	Weighting	Raw score	Weight score	Assessment rationale
Efficiency	40%	5	2	Under this option, the cost of regulating the industry (BLA and CAV) is only partially recovered (54%).
Equity	20%	-3	-0.6	<p>Under the base case, no financial (fees) barriers exist to entering the industry.</p> <p>Under Option 2, barriers to entry remain the same as the current environment. As found through consultation, barriers to participation in the industry do exist with a recent squeeze on profits due to increased competition from small owner-operators and the illegal sector.</p> <p>Fees are, however, structured to ensure that small businesses pay less than large businesses and are at no financial disadvantage.</p>
Effectiveness	30%	0	0	<p>It is important that adequate monitoring and enforcement exists to achieve the objectives of the Regulations and Act.</p> <p>However, the monitoring and enforcement activities undertaken by CAV and BLA focus only on the legal sector.</p> <p>Should fees increase, there is the potential that the additional cost pressures will force businesses to close, operate illegally or reduce their compliance with requirements.</p> <p>It is assumed that under this option, with no fee change, the industry will remain the same size as it is currently and compliance will remain the same. As such, a score of 0 has been allocated.</p> <p>It is not expected that having no fees at all would necessarily encourage more businesses to be licensed than retaining the current fee structure.</p> <p>It is more likely that those who operate without a licence are rejecting all the other requirements that go with a licence, including:</p> <ul style="list-style-type: none"> <li>• In the case of brothels, the need for a planning permit (this is significant because many reports of illegal brothels are in areas where they would not have obtained a permit, such as residential areas and shopping strips, etc.)</li> <li>• In the case of brothels, limitations on room numbers, requirements for panic alarms, signage, etc.</li> <li>• Being subject to inspections by CAV, Victoria Police, Health, and other regulators.</li> <li>• Requirements in relation to the treatment of workers, the practicing of safe sex, etc.</li> <li>• The need to be free of serious criminal convictions and associations.</li> </ul>
Simplicity	10%	-2	-0.2	Compared with other options, the current structure, at the current fee levels, is relatively easy to understand as businesses have adapted to the structure and levels over the past 10 years. This option scores only slightly lower than the base case
Total		0	1.2	

### 5.3.3 Option 3: Retain Current Fee Structure (at full cost recovery levels)

Under this option the fee structure remains easy to understand but fee increases achieve cost recovery. The increase in fees may have an adverse impact on business performance and may force businesses into the illegal sector or not to record all rooms, business name or telephone numbers. Factors important in the scoring of Option 3 include:

- Option 3 achieves full cost recovery
- Current business performance (and profitability) will be impacted by increases to fees which is likely to influence business performance
- Compared with previous options that do not fully recover costs, additional funding may be available to support additional monitoring and compliance activities.

Table 21: Scoring and rationale (Option 3)

Criteria	Weighting	Raw score	Weight score	Assessment rationale
Efficiency	40%	10	4	Full cost recovery is achieved compared with the base case that recovers 0% of the costs.
Equity	20%	-8	-1.6	Under the base case, no financial (fees) barriers exist to entering the industry. Under Option 3 there will be a significant barrier to entry as fee increases (per business) are likely to exceed 80%. Fees do however, continue to differ based on the size of the business with small business paying less than large businesses.
Effectiveness	30%	-3	-0.9	As monitoring and enforcement activities are undertaken by CAV and BLA on the legal sector, current compliance levels are compared to potential changes in the industry as a result of increases. Should fees increase, there is the potential that the additional cost pressures will force businesses to close, operate illegally or reduce their compliance with requirements. It is assumed that under this option, with a significant fee change, the industry will experience some business losses and lower levels of compliance. As such, a score of -3 has been allocated.
Simplicity	10%	-2	-0.2	While the fee level has increased the fee structure has remained the same. The score reflects that of Option 2.
Total		5	1.3	

### 5.3.4 Option 4: Remove Fee for Telephone Numbers and add section 40 (initial option 3) at 100% cost recovery

While the principle of the fee structure remains (base fee plus fee for individual business characteristics), there has been minor consolidation with the removal of a fee item for telephone numbers.

Achieving full cost recovery will provide a high level of fees for enforcement and compliance activities however may push some struggling businesses into the illegal sector.

- Option 4 achieves full cost recovery
- Current business performance (and profitability) will be impacted by increases to fees which is likely to influence business performance
- Compared with previous options that do not fully recover costs, additional funding may be available to support additional monitoring and compliance activities.

Table 22: Scoring and rationale (Option 4)

Criteria	Weighting	Raw score	Weight score	Assessment rationale
Efficiency	40%	10	4	Full cost recovery is achieved compared with the base case that recovers 0% of the costs.
Equity	20%	-8	-1.6	Under the base case, no financial (fees) barriers exist to entering the industry. Under Option 4 there will be a significant barrier to entry as fees increases (per business) are likely to exceed 80%. Fees do however, continue to differ based on the size of the business with small business paying less than large businesses.
Effectiveness	30%	-3	-0.9	Should fees increase, there is the potential that the additional cost pressures will force businesses to close, operate illegally or reduce their compliance with requirements. It is assumed that under this option, with a significant fee change, the industry will experience some business losses and lower levels of compliance. As such, a score of -3 has been allocated.
Simplicity	10%	-1	-0.1	The removal of telephone numbers as a fee item makes the fee structure simpler. The inclusion of additional fee items (Section 40, operating insolvent and inspecting the register) does not counteract this as these are flat fees for infrequently requested services. A small minority of individuals are subject to these fees per annum. Removing the fee for telephone numbers removes the requirements for all businesses to count and report additional

Criteria	Weighting	Raw score	Weight score	Assessment rationale
				phone lines. Through consultation it became apparent that telephone numbers are becoming less relevant for the industry and is no longer a reliable gauge of business size. This line item has been removed to simplify the fee structure.
Total		-2	1.4	

### 5.3.5 Option 5: Remove Fee for Telephone Numbers and add section 40 (initial option 3) at 70% cost recovery

Fee structure matches that of Option 4, however fees are set to achieve 70% cost recovery and do not increase as significantly as the full cost recovery options.

Table 23: Scoring and rationale (Option 5)

Criteria	Weighting	Raw score	Weight score	Assessment rationale
Efficiency	40%	7	2.8	70% cost recovery is achieved compared with the base case that recovers 0% of the costs. While this is not full cost recovery (scoring less than 10), it is a significant improvement on the Base Case which does not recover costs.
Equity	20%	-4	-0.8	Under the base case, no financial (fees) barriers exist to entering the industry. Under Option 5 there is an increased barrier to entry as fee increases (per business) are likely to exceed 30%. This is not as severe an increase as Options 3 and 4 but will put pressure on businesses in the industry. Fees do however, continue to differ based on the size of the business with small business paying less than large businesses.
Effectiveness	30%	-1	-0.3	Should fees increase, there is the potential that the additional cost pressures will force businesses to close, operate illegally or reduce their compliance with requirements. It is assumed that under this option, with a fee change (albeit lower than Option 3 and 4), the industry will experience some business losses and lower levels of compliance. As such, a score of -1 has been allocated.
Simplicity	10%	-1	-0.1	The removal of telephone numbers as a fee item makes the fee structure simpler. The inclusion of additional fee items (Section 40, operating insolvent and inspecting the register) does not counteract this as these are flat fees for infrequently requested services. A small minority of individual are subject to these fees per annum. Removing the fee for telephone numbers removes the requirements for all businesses to count and report additional phone lines. Through consultation it became apparent that telephone numbers are becoming less relevant for the industry and is no longer a reliable gauge of business size. This line item has been removed to simplify the fee structure.
		1	1.6	

## 5.4 Summary of options analysis

A summary of the scoring is presented below. The analysis indicates that Option 5 is the preferred response. This is influenced by the desire of the State Government to recover the costs associated with regulating the industry (efficiency) and meeting the objectives of regulations.

Table 24: Scoring and rationale

Criteria	Weighting	Option 1: No fee		Option 2: Retain current fee structure at current fee levels		Option 3: Retain current fee structure at full cost recovery levels		Option 4: Remove fee for telephone numbers and add section 40 at 100% cost recovery		Option 5: Remove Fee for Telephone Numbers and add section 40 at 70% cost recovery	
		Raw score	Raw score	Raw score	Weight score	Raw score	Weight score	Raw score	Weight score	Raw score	Weight score
Efficiency	40%	0	0	5	2	10	4	10	4	7	2.8
Equity	20%	0	0	-3	-0.6	-8	-1.6	-8	-1.6	-4	-0.8
Effectiveness	30%	0	0	0	0	-3	-0.9	-3	-0.9	-1	-0.3
Simplicity	10%	0	0	-2	-0.2	-2	-0.2	-1	-0.1	-1	-0.1
TOTAL	100%	0	0	0	1.2	5	1.3	-2	1.4	1	1.6
Ranking		5		4		3		2		1	

## 6. Impact on small business

### Summary

- The structure of the fees means larger business pay more during both the application phase and renewal phase as additional charges for rooms and business names are included.
- There is not a disproportionate impact on small businesses when compared with large businesses in the industry.

### 6.1 Introduction

Regulatory changes can have a disproportionate impact on small businesses as they typically have lower levels of resources and specialised staff compared to larger businesses. Regulation should therefore not unfairly disadvantage the ability of small firms to carry on their business. This section examines how the proposed fee changes may impact legal small brothels and escort agencies.

### 6.2 Small businesses in the sex work industry

The Australian Bureau of Statistics defines a small business as a business employing fewer than 20 people<sup>27</sup>. In the sex work industry, there are two categories of small business:

- Small owner-operator businesses of one or two people
- Small escort agencies, brothels or combined escort agencies and brothels.

Due to the desire of having small owner operator businesses register with the CAV and BLA (and not put up barriers that force them to operate illegally), they will continue not to pay fees. As such, this RIS will focus on the latter category, those that are required to pay fees.

However, identifying the scale of small businesses that engage in legal sex work is inherently difficult. First, neither CAV nor the BLA maintain a record of sex workers who work at brothels or escort agencies. Second, due to the ease with which workers move between not only the legal and illegal industries but also between businesses, any estimate of workforce size is likely to be inaccurate and some element of double-counting may result.

As such, it is not possible to estimate accurately the number of employees or contractors working for any one business. However, given factors such as the six-room limit on new brothels, and the fact that most escort agencies operate with two or fewer telephone lines, it is reasonable to assume that a sizeable proportion of businesses in the sex work industry are indeed small businesses.

### 6.3 Considerations for small business

An assessment of the impact of small businesses must consider various matters such as:

- Variation in the compliance burden between small and large businesses
- Whether any compliance flexibility options have been considered that will assist small businesses to meet the requirements of the proposed measure
- The likely extent of compliance by small versus large businesses
- The distribution of benefits arising from the proposed regulations
- The relative impact of penalties and fees for non-compliance.

### 6.4 Impacts on small businesses

The structure of the fees means larger businesses pay more during both the application phase and renewal phase as additional charges for rooms and business names are included.

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<sup>27</sup> Australian Bureau of Statistics (2009) 1321.0 - *Small Business in Australia, 2001*, accessed from <http://www.abs.gov.au/AUSSTATS/abs@.nsf/mf/1321.0>



As such there is not a disproportionate impact of small businesses when compared with large businesses in the industry.

It is unlikely that the proposed fee structure and levels will result in a significant difference in compliance between small and large businesses.

## 7. Competition assessment

### Summary

The guiding principle is that regulation should not restrict competition unless it can be demonstrated that:

- The benefits of the restriction/regulation to the community as a whole outweigh the costs
- The objectives of the regulation can only be achieved by restricting competition.

Analysis of fee increases and consultation with a selection of industry stakeholders and participants found:

- Within the legal sector it is unlikely that increasing the fees will impact on competition between businesses
- Due to increased competition from small owner-operators and illegally operating businesses, increasing fees will impact on competition and may force some legitimate brothels or escort agencies to close or operate illegally.

### 7.1 Competition considerations

The guiding principle is that regulation should not restrict competition unless it can be demonstrated that:

- The benefits of the restriction/regulation to the community as a whole outweigh the costs
- The objectives of the regulation can only be achieved by restricting competition.

A measure is likely to have an impact on competition if any of the following questions can be answered in the affirmative:

Table 25: Competition considerations criteria

Question	Response	Justification
Is the proposed measure likely to affect the market structure of the affected sector(s); in other words, will it reduce the number of participants in the market, or increase the size of incumbent firms?	Likely	Higher costs may reduce the number of existing firms. Firms may choose to exit the industry and pursue other interests, lower compliance or operate illegally.
Will it be more difficult for new firms or individuals to enter the industry after the imposition of the proposed measure?	Yes	The costs of entering the sex work industry are now higher.
Will the costs/benefits associated with the proposed measure affect some firms or individuals substantially more than others (for example, small firms, part-time participants in occupations)?	No	The new fee structures are intended to take into account the different size of businesses (in terms of business names and rooms). All legal business are likely to experience similar costs and benefits.
Will the proposed measure restrict the ability of businesses to choose the price, quality, range or location of their products?	No	The proposed fees will not impact on how business itself is actually carried out. Existing regulation restricts the ability to choose locations or services offered.
Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet?	Unlikely	The same fees apply to both new and existing businesses alike. However, existing brothels with more than six rooms may possess advantages such as economies of scale and greater flexibility compared to new entrants who are restricted to six or fewer rooms.
Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure?	No	The ability to innovate and develop new services in the sex work industry is already highly regulated.

It is likely that the proposed regulations will have an impact on competition within the sex work industry as small owner-operators and the illegal sector continue to place competitive pressure on legal brothels and escort agencies.

### 7.2 Competition Test

A 'competition test' is a three-stage process that is applied to the options in order to determine whether any particular legislative option may have the effect of restricting competition.

## 7.2.1 Stage 1: Identify restriction on competition

There are various factors to be considered when determining whether any proposed legislation will act to restrict competition. These include whether the regulations:

- Limit the number or range of suppliers
- Limit the ability of suppliers to compete
- Reduce the incentive of suppliers to compete vigorously.

It is plausible that the proposed increase in fees will reduce the number of legal businesses in Victoria that supply sex work. While sex workers have some ability to adapt (for example, they may move from escort agency work to small owner-operator work), licensees do not. With increasing pressure on costs and limited opportunities to increase prices or services, business owners may be forced to leave the industry or operate illegally.

Through a range of established regulations and fees, the Victorian Government has adopted a range of controls to monitor the industry to ensure objectives are met.

## 7.2.2 Stage 2: Show that the restriction is necessary to achieve the objective

The cost to CAV and BLA of regulating the industry has been estimated at \$1.7 million per annum. To recover these costs it is necessary to have fees in place. To fully recover costs, fees will need to increase from their current levels.

Without adequate fees, cost recovery objectives will not be achieved. Furthermore, monitoring activities may be limited, putting in jeopardy wider objectives in the sex work industry.

## 7.2.3 Stage 3: Assess whether the benefits of the restriction outweigh the costs

The benefit of imposing a fee on the legal sex work industry is that it allows the State Government to monitor licensees and brothel managers to ensure they continue to comply with regulatory requirements.

The costs of the Regulations include:

- Fees paid by businesses and brothel managers in the sex work industry
- Businesses that now illegally operate due to the increase in fee levels
- Businesses that operate at a lower level of compliance due to the increase in fee levels.

Due to the requirements set out in the *Act*, it is important that costs of regulating the industry are recovered. While there are costs associated with increased fees, on balance, the benefits will outweigh the costs.

## 7.3 Impacts on competition

Within the legal sector it is unlikely that increasing the fees will impact on competition between businesses.

Increased competition for legal brothels and escort agencies does however come from legal small owner-operators and from illegally operating businesses. Increasing fees will impact on competition in the industry and may force some businesses to close or operate illegally.

## 8. Implementation and enforcement

### Summary

CAV is tasked with the following:

- Compliance monitoring of licensed sex work service providers (including onsite inspections, online surveillance, monitoring of advertising, etc.) and registered small owner-operators
- Responding to and dealing appropriately with emerging issues in the licensed sex work industry
- Responding to enquiries and complaints from the public and industry
- Engaging and being responsive with regulatory partners such as Department of Immigration and Border Protection, Australian Federal Police, Victoria Police and the Department of Health.

CAV and the BLA are not responsible for monitoring and enforcement of the illegal sex work industry. This is the responsibility of Victorian Police.

### 8.1 Compliance and enforcement (legislative reform, 2011)

Prior to the 2010 election, the Coalition made the following commitments:

- Make Victoria Police the lead agency for the enforcement of laws relating to the sex work industry, to ensure that appropriate attention is paid to the removal of criminal elements.
- Work with federal and local governments to convene an illegal brothel taskforce with the involvement of Victoria Police, Consumer Affairs Victoria, Department of Immigration, Australian Taxation Office and councils. This taskforce will establish a multi-agency enforcement program, involving sharing of data, intelligence and resources, to identify, arrest and prosecute operators of illegal brothels in Victoria and offer appropriate assistance to sex workers.
- Amend legislation regulating the sex industry to minimise and, where possible, eliminate any uncertainties as to responsibility for enforcement
- Maintain and actively enforce the ban on street sex work
- Strengthen proceeds of crime legislation to provide for a wider range of offences relating to illegal sex work that will attract sanctions.

The *Sex Work and Other Acts Amendment Act 2011* implemented a suite of reforms to the *Sex Work Act 1994* and the *Confiscation Act 1997*, in line with commitments made prior to the 2010 election.

Amongst other things, *the Sex Work and Other Acts Amendment Act 2011* amended the *Act* to clarify the division of enforcement responsibilities between Victoria Police and CAV. Victoria Police was made the lead enforcement agency for the enforcement of certain laws relating to the sex work industry.

Specifically, the reforms made it clear that CAV has no enforcement responsibility, and must refer to police, any allegation, complaint or information involving:

- A contravention of *the Act* for which CAV has no prosecutorial functions (including street sex work and serious criminal offences such as forced or underage sex work, and operating a sex work business without a licence)
- A brothel operating without a planning permit
- An organised crime offence relating to the sex work industry.

Following the reforms, CAV retained powers to bring proceedings for offences that are particularly relevant to the activities of businesses carried on by licensed sex work service providers. These include allowing a child in a brothel, advertising controls, safer sex requirements, and the prohibition on alcohol in brothels.

*The Act* was also amended to provide police members with specific entry powers for suspected brothels operating without a planning permit, and to clarify other matters in relation to proscription orders.

The Coalition also committed prior to the 2010 election to strengthen proceeds of crime legislation to provide for a wider range of offences relating to illegal sex work that will attract sanctions.

The 2011 reforms delivered on this commitment by expanding powers under the *Confiscation Act* for forfeiture upon court order following a conviction. These powers were widened to apply to the offences of carrying on business as a sex work provider with an unlicensed partner, and various offences relating to the illegal advertising of sex work services under the *Sex Work Act*. The reforms also expanded powers in the *Confiscation Act* for automatic forfeiture following conviction, and civil forfeiture. These powers were expanded to apply to more serious sexual servitude offences under the *Crimes Act 1958*. The changes introduced ensured that authorities are better equipped to disrupt and deter illegal sex work activity and to deprive persons who engage in such activity of their ill-gotten gains.

## 8.2 Consumer Affairs Victoria's role

Although CAV is still required under the legislation to liaise with Victoria Police to assist the police force in carrying out its functions, CAV's main role is now limited to dealing with how licensed brothels operate. CAV remains primarily responsible for supporting the BLA to licence, register and approve individuals under *the Act*, and for monitoring their compliance with *the Act*.

The 2011 reforms ensured that CAV retains powers to bring proceedings for offences relating to the licensing scheme for sex work service providers set out in Part 3 of the *Act*. It should be noted, however, that Victoria Police has the sole power to enforce the offences of carrying on business as a sex work service provider without a valid licence, or assisting in the commission of such an offence.

CAV retains responsibility for:

- Compliance monitoring of licensed sex work service providers (including onsite inspections, online surveillance, monitoring of advertising, etc.)
- Responding to and dealing appropriately with emerging issues in the licensed sex work industry
- Responding to enquiries and complaints from the public and industry
- Engaging with and being responsive to regulatory partners such as the Department of Immigration and Border Protection, Australian Federal Police, Victoria Police and the Department of Health.

To improve the compliance rate, CAV undertakes a range of compliance assistance activities, including:

- Sending education letters to businesses
- Providing verbal warnings after inspections
- Sending SMS messages to remind industry participants of regulatory requirements.

If, through inspection and investigations, it is found that legal sex work businesses and brothel managers are in breach of their regulatory requirements CAV can employ a range of enforcement activities, including:

- Warning letters issued
- Infringement notices issued
- Administrative / disciplinary actions taken
- Civil actions
- Criminal actions.

CAV trader conduct enforcement processes commonly pick up matters such:

- Breaches of the advertising requirements of the Sex Work Regulations.
- Alcohol on the brothel premises
- Incorrect or missing safe sex signage
- Incorrect or missing sexual slavery signage
- Allegations of children being present
- Alarms not being accessible
- Not keeping manager details up to date with the BLA
- Managers not having their ID cards.

A summary of enforcement activities is presented below.

Table 26: Compliance and enforcement activity 2012/13

Compliance and enforcement	
INSPECTION ACTIVITY	
Physical inspections	113
INVESTIGATIONS AND SURVEILLANCE	
Surveillance	159
Advertising-related compliance activity	220
Investigations commenced	162
ENFORCEMENT	
Enforcement activity	32

The BLA on average refuses several sex work service provider applications per year, often on probity grounds, and applications are also regularly withdrawn (often due the applicant's awareness of the likelihood of not meeting the requirements of a licence).

## 8.3 Victoria Police

For information purposes only, activities being undertaken by Victoria Police to address issues with illegal sex work in Victoria are outlined below. These activities are not covered by the fees collected by CAV and the BLA through the *Fees Regulations*.

### 8.3.1 Sex Industry Coordination Unit (SICU)

Victoria Police officially set up the Sex Industry Coordination Unit (SICU) on 29 February 2012, to coincide with the commencement of the *Sex Work and Other Acts Amendment Act 2011* on 1 March 2012.

The role of the unit is to investigate the extent of illegal brothels and gather intelligence on the issue. The unit has conducted investigations into suspected illegal brothels in metropolitan Melbourne, and has provided advice and assistance to a number of Crime Investigation Units and Sex Offence and Child Abuse Investigation Teams across Victoria in relation to suspected illegal brothels operating in their local areas.

The Unit assists police, providing expertise and intelligence on the sex industry. Victoria Police has seen gains in intelligence gathering and enforcement options available to police.

### 8.3.2 Victoria Sex Industry Strategic Management Group (VSISMG)

As well as clarifying enforcement roles in legislation, in 2011 the Government set up a dedicated sex work taskforce. Named the Victoria Sex Industry Strategic Management Group, it is chaired by Victoria Police. The group focuses on sharing resources, data and intelligence between state and federal agencies.

## 8.4 Implementation

Under the current regulations, additional fees (room, telephone number and business name fees) are charged to each sex work service provider licensee. This is the case even where multiple licensees are partners in the same business. It is proposed that there be a new regulation reflecting the fact that where one or more licensees are business partners, licensed in respect of the same business, the additional room and/or business name fees should be apportioned equally, according to the number of licensees. The base fees would remain payable by each licensee.

Another concern for the implementation of the proposed fee level is the timing of fee changes.

The difficulty in changing fee levels is:

- For sex work service provider annual statements, there is a 6-week period leading up to the licence anniversary date in which the licensee can pay the annual fee
- For brothel managers, there is a three-month window to pay, which closes three months before the actual expiry of the approval.

To overcome these two concerns it is proposed:

- Sex work service providers will be required to pay the new fee if their licence anniversary date falls after the introduction of the new regulations (i.e. 1 July 2014). This is because, although payment can be made up to six weeks before it falls due, the due date is that of the anniversary, and the relevant fee is the one applying on that day.
- For brothel managers, if any part of the three-month payment window falls prior to 1 July 2014, they will have the option of paying the current fee levels. The reason for this is CAV must send out invoices for brothel manager renewal well in advance of expiry (with payment required three months prior to expiry). As the regulations will not be in place by early 2014, brothel managers will have the option of paying the current fee level. From 1 July 2015, payment will match the fees applicable on the date on which the brothel manager renewal is lodged.

## 9. Conclusion and evaluation strategy

### 9.1 Conclusion

Victoria's Cost Recovery Guidelines state that as a general principle, fees should be set at cost recovery unless there are important policy reasons not to do so. Legislation requires CAV and the BLA to license and regulate the sex work industry, and fees collected from industry participants are required to cover costs. However it is also important that the objectives of the regulations are not jeopardised. This is likely to occur if businesses decide to operate illegally or ignore specific requirements.

Options 5: Remove fee for telephone numbers and add section 40 at 70% cost recovery, has been assessed as the preferred option. Under Option 5, the fees structure and levels will be:

Table 27: Preferred option fee structure and level

Item	Current fees (indexed for 2014/15) 54% Cost Recovery	Proposed fees (Option 5)	Total increase per fee item by YEAR 3	Phase in (excluding DTF annual escalation)		
				YEAR 1 (2014/15) 57% Cost Recovery	YEAR 2 (2015/16) 63% Cost Recovery	YEAR 3 (2016/17) 70% Cost Recovery
<b>Sex Work Service Providers</b>						
New Applications						
<i>Escort Agency Only</i>	\$2,251.40	\$3,014.20	34%	\$2,505.60	\$2,759.90	\$3,014.20
<i>Brothel Only</i>	\$4,502.70	\$6,028.30	34%	\$5,011.10	\$5,519.70	\$6,028.30
<i>Escort + Brothel</i>	\$4,502.70	\$6,028.30	34%	\$5,011.10	\$5,519.70	\$6,028.30
Licence Renewals (all)						
<i>Escort Agency Only</i>	\$2,573.00	\$3,444.80	34%	\$2,863.40	\$3,154.10	\$3,444.80
<i>Brothel Only</i>	\$2,573.00	\$3,444.80	34%	\$2,863.40	\$3,154.10	\$3,444.80
<i>Escort + Brothel</i>	\$2,573.00	\$3,444.80	34%	\$2,863.40	\$3,154.10	\$3,444.80
Late Fees	\$386.00	\$516.80	34%	\$429.60	\$473.20	\$516.80
Extension Time	\$192.90	\$258.30	34%	\$214.70	\$236.50	\$258.30
Additional Room	\$482.50	\$645.90	34%	\$536.90	\$591.40	\$645.90
Add. Business name	\$482.50	\$645.90	34%	\$536.90	\$591.40	\$645.90
Section 40 application		\$1,508.50	n/a	\$502.80	\$1,005.70	\$1,508.50
Inspect the register		\$35.00	n/a	\$11.70	\$23.30	\$35.00
<b>Brothel Managers</b>						
New Applications	\$334.50	\$448.00	34%	\$372.30	\$410.20	\$448.00
Renewals (3 year)	\$334.50	\$448.00	34%	\$372.30	\$410.20	\$448.00
Operate insolvent		\$114.80	n/a	\$38.30	\$76.50	\$114.80

Fees will increase each year by the annual fee unit escalation set by the Department of Treasury and Finance. This increase differs from year to year. The fees set out above are in 2014/15 dollars and may not reflect the exact amount paid in that year. The fees paid in years 2 and 3 are likely to be more than that set out above due to fee unit escalation.

Fees are presented in fee units in the *Fees Regulations*. In 2013/14 each fee unit was \$12.84. It is predicted the fee unit will increase to \$13.16 on 2014/15. The approximate fee units over the next three years are presented below.



Table 28: Fee units

Item	Fee units			
	Current (2013/14)	YEAR 1 (2014/15)	YEAR 2 (2015/16)	YEAR 3 (2016/17)
<b>Sex Work Service Providers</b>				
New Applications				
<i>Escort Agency Only</i>	171.07	190.39	209.72	229.04
<i>Brothel Only</i>	342.13	380.78	419.43	458.08
<i>Escort + Brothel</i>	342.13	380.78	419.43	458.08
Licence Renewals (all)				
<i>Escort Agency Only</i>	195.50	217.59	239.67	261.76
<i>Brothel Only</i>	195.50	217.59	239.67	261.76
<i>Escort + Brothel</i>	195.50	217.59	239.67	261.76
Late Fees	29.33	32.64	35.96	39.27
Extension Time	14.66	16.32	17.97	19.63
Additional Room	36.66	40.80	44.94	49.08
Add. Business name	36.66	40.80	44.94	49.08
Section 40 application		38.21	76.42	114.63
Inspect the register		0.89	1.77	2.66
<b>Brothel Managers</b>				
New Applications	25.42	28.29	31.17	34.04
Renewals (3 year)	25.42	28.29	31.17	34.04
Operate insolvent		2.91	5.81	8.72

In conclusion:

- The proposed fees are set in accordance with the cost recovery principles in the Victorian Guide to Regulation (Edition 2.1, August 2011) and the Cost Recovery Guidelines (January 2013) with partial cost recovery, based on a desire to achieve regulatory objectives of monitoring and enforcing requirements on sex work providers
- The proposed fees do not adversely impact small business.

## 9.2 Evaluation strategy

CAV and the BLA are continuing to explore ways to improve the efficiency of their services.

While recent efficiency gains have been captured in the cost analysis, CAV will undertake another full cost analysis exercise every three to four years to determine accurately the level of cost recovery.

## Appendix A: Proposed regulations

### **Sex Work (Fees) Regulations 2014**

**S.R. No. XX/2014**

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

HEIDI VICTORIA  
Minister for Consumer Affairs

Clerk of the Executive Council

#### **PART 1—PRELIMINARY**

##### **1 Objective**

The objective of these Regulations is to prescribe fees to be paid under the **Sex Work Act 1994**.

##### **2 Authorising provisions**

These Regulations are made under sections 68 and 90 of the **Sex Work Act 1994**.

##### **3 Commencement**

These Regulations come into operation on 1 July 2014.

##### **4 Revocation**

The Sex Work (Fees) Regulations 2004<sup>1</sup> are **revoked**.

##### **5 Definitions**

In these Regulations—

*business name* has the same meaning as in the Business Names Registration Act 2011 of the Commonwealth;

*the Act* means the **Sex Work Act 1994**.

## PART 2—FEES

### 6 Licence application fees

- (1) For the purposes of section 33(2)(d)(i) of the Act, the prescribed application fee for a licence to carry on business as a sex work service provider of the kind referred to in the definition of **brothel** in section 3 of the Act is—
  - (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 380.78 fee units; or
  - (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 419.43 fee units; or
  - (c) in the case of an application lodged on or after 1 July 2016, 458.08 fee units.
- (2) For the purposes of section 33(2)(d)(i) of the Act, the prescribed application fee for a licence to carry on business as a sex work service provider of the kind referred to in the definition of **escort agency** in section 3 of the Act is—
  - (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 190.39 fee units; or
  - (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 209.72 fee units; or
  - (c) in the case of an application lodged on or after 1 July 2016, 229.04 fee units.
- (3) For the purposes of section 33(2)(d)(i) of the Act, the prescribed application fee for a licence to carry on business as a sex work service provider of the kinds referred to in the definitions of **brothel** and **escort agency** in section 3 of the Act is—
  - (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 380.78 fee units; or
  - (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 419.43 fee units; or
  - (c) in the case of an application lodged on or after 1 July 2016, 458.08 fee units.

## 7 Licence fees

- (1) For the purposes of section 33(2)(d)(ia) of the Act, the prescribed licence fee for a licence to carry on business as a sex work service provider of the kind referred to in the definition of *brothel* in section 3 of the Act is—
  - (a) in the case of an application for a licence lodged on or after 1 July 2014 and before 1 July 2015—
    - (i) 217.59 fee units; and
    - (ii) if more than one room in the brothel is to be used or is used for sex work—
      - (A) if one person is granted a licence in relation to the brothel, 40.80 fee units for each additional room; or
      - (B) if more than one person is granted a licence in relation to the brothel, 40.80 fee units for each additional room, divided by the number of licences granted in relation to the brothel; and
    - (iii) if more than one business name is to be used or is used in carrying on the business—
      - (A) if one person is granted a licence in relation to the brothel, 40.80 fee units for each additional business name; or
      - (B) if more than one person is granted a licence in relation to the brothel, 40.80 fee units for each additional business name, divided by the number of licences granted in relation to the brothel; or
  - (b) in the case of an application for a licence lodged on or after 1 July 2015 and before 1 July 2016—
    - (i) 239.67 fee units; and
    - (ii) if more than one room in the brothel is to be used or is used for sex work—
      - (A) if one person is granted a licence in relation to the brothel, 44.94 fee units for each additional room; or

- (B) if more than one person is granted a licence in relation to the brothel, 44.94 fee units for each additional room, divided by the number of licences granted in relation to the brothel; and
- (iii) if more than one business name is to be used or is used in carrying on the business—
  - (A) if one person is granted a licence in relation to the brothel, 44.94 fee units for each additional business name; or
  - (B) if more than one person is granted a licence in relation to the brothel, 44.94 fee units for each additional business name, divided by the number of licences granted in relation to the brothel; or
- (c) in the case of an application for a licence lodged on or after 1 July 2016—
  - (i) 261.76 fee units; and
  - (ii) if more than one room in the brothel is to be used or is used for sex work—
    - (A) if one person is granted a licence in relation to the brothel, 49.08 fee units for each additional room; or
    - (B) if more than one person is granted a licence in relation to the brothel, 49.08 fee units for each additional room, divided by the number of licences granted in relation to the brothel; and
  - (iii) if more than one business name is to be used or is used in carrying on the business—
    - (A) if one person is granted a licence in relation to the brothel, 49.08 fee units for each additional business name; or
    - (B) if more than one person is granted a licence in relation to the brothel, 49.08 fee units for each additional business name, divided by the

number of licences granted in  
relation to the brothel.

- (2) For the purposes of section 33(2)(d)(ia) of the Act, the prescribed licence fee for a licence to carry on business as a sex work service provider of the kind referred to in the definition of *escort agency* in section 3 of the Act is—
- (a) in the case of an application for a licence lodged on or after 1 July 2014 and before 1 July 2015—
- (i) 217.59 fee units; and
- (ii) if more than one business name is to be used or is used in carrying on the business—
- (A) if one person is granted a licence in relation to the escort agency, 40.80 fee units for each additional business name; or
- (B) if more than one person is granted a licence in relation to the escort agency, 40.80 fee units for each additional business name, divided by the number of licences granted in relation to the escort agency; or
- (b) in the case of an application for a licence lodged on or after 1 July 2015 and before 1 July 2016—
- (i) 239.67 fee units; and
- (ii) if more than one business name is to be used or is used in carrying on the business—
- (A) if one person is granted a licence in relation to the escort agency, 44.94 fee units for each additional business name; or
- (B) if more than one person is granted a licence in relation to the escort agency, 44.94 fee units for each additional business name, divided by the number of licences granted in relation to the escort agency; or
- (c) in the case of an application for a licence lodged on or after 1 July 2016—
- (i) 261.76 fee units; and

- (ii) if more than one business name is to be used or is used in carrying on the business—
  - (A) if one person is granted a licence in relation to the escort agency, 49.08 fee units for each additional business name; or
  - (B) if more than one person is granted a licence in relation to the escort agency, 49.08 fee units for each additional business name, divided by the number of licences granted in relation to the escort agency.
- (3) For the purposes of section 33(2)(d)(ia) of the Act, the prescribed licence fee for a licence to carry on business as a sex work service provider of the kinds referred to in the definitions of *brothel* and *escort agency* in section 3 of the Act is—
  - (a) in the case of an application for a licence lodged on or after 1 July 2014 and before 1 July 2015—
    - (i) 217.59 fee units; and
    - (ii) if more than one room in the brothel is to be used or is used for sex work—
      - (A) if one person is granted a licence in relation to the brothel and escort agency, 40.80 fee units for each additional room; or
      - (B) if more than one person is granted a licence in relation to the brothel and escort agency, 40.80 fee units for each additional room, divided by number of licences granted in relation to the brothel and escort agency; and
  - (iii) if more than one business name is to be used or is used in carrying on the business—
    - (A) if one person is granted a licence in relation to the brothel and escort agency, 40.80 fee units for each additional business name; or
    - (B) if more than one person is granted a licence in relation to the brothel and

escort agency, 40.80 fee units for each additional business name, divided by the number of licences granted in relation to the brothel and escort agency; or

- (b) in the case of an application for a licence lodged on or after 1 July 2015 and before 1 July 2016—
  - (i) 239.67 fee units; and
  - (ii) if more than one room in the brothel is to be used or is used for sex work—
    - (A) if one person is granted a licence in relation to the brothel and escort agency, 44.94 fee units for each additional room; or
    - (B) if more than one person is granted a licence in relation to the brothel and escort agency, 44.94 fee units for each additional room, divided by number of licences granted in relation to the brothel and escort agency; and
  - (iii) if more than one business name is to be used or is used in carrying on the business—
    - (A) if one person is granted a licence in relation to the brothel and escort agency, 44.94 fee units for each additional business name; or
    - (B) if more than one person is granted a licence in relation to the brothel and escort agency, 44.94 fee units for each additional business name, divided by the number of licences granted in relation to the brothel and escort agency; or
- (c) in the case of an application for a licence lodged on or after 1 July 2016—
  - (i) 261.76 fee units; and
  - (ii) if more than one room in the brothel is to be used or is used for sex work—
    - (A) if one person is granted a licence in relation to the brothel and escort agency, 49.08 fee units for each additional room; or



- (B) if more than one person is granted a licence in relation to the brothel and escort agency, 49.08 fee units for each additional room, divided by number of licences granted in relation to the brothel and escort agency; and
- (iii) if more than one business name is to be used or is used in carrying on the business—
  - (A) if one person is granted a licence in relation to the brothel and escort agency, 49.08 fee units for each additional business name; or
  - (B) if more than one person is granted a licence in relation to the brothel and escort agency, 49.08 fee units for each additional business name, divided by the number of licences granted in relation to the brothel and escort agency.

## 8 Licence amendment fees

- (1) For the purposes of section 40(3) of the Act, the prescribed fee for an application to amend a licence is—
  - (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 38.21 fee units; or
  - (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 76.42 fee units; or
  - (c) in the case of an application lodged on or after 1 July 2016, 114.63 fee units.

## 9 Annual licence fees

- (1) For the purposes of section 46A(1) of the Act, the prescribed annual licence fee for a licence to carry on business as a sex work service provider of the kind referred to in the definition of *brothel* in section 3 of the Act is—
  - (a) on and after 1 July 2014 and before 1 July 2015—
    - (i) 217.59 fee units; and
    - (ii) if more than one room in the brothel is to be used or is used for sex work—

- (A) if one person has been granted a licence in relation to the brothel, 40.80 fee units for each additional room; or
- (B) if more than one person has been granted a licence in relation to the brothel, 40.80 fee units for each additional room, divided by the number of licences granted in relation to the brothel; and
- (iii) if more than one business name is to be used or is used in carrying on the business—
  - (A) if one person has been granted a licence in relation to the brothel, 40.80 fee units for each additional business name; or
  - (B) if more than one person has been granted a licence in relation to the brothel, 40.80 fee units for each additional business name, divided by the number of licences granted in relation to the brothel; or
- (b) on and after 1 July 2015 and before 1 July 2016—
  - (i) 239.67 fee units; and
  - (ii) if more than one room in the brothel is to be used or is used for sex work—
    - (A) if one person has been granted a licence in relation to the brothel, 44.94 fee units for each additional room; or
    - (B) if more than one person has been granted a licence in relation to the brothel, 44.94 fee units for each additional room, divided by the number of licences granted in relation to the brothel; and
  - (iii) if more than one business name is to be used or is used in carrying on the business—
    - (A) if one person has been granted a licence in relation to the brothel, 44.94 fee units for each additional business name; or

- (B) if more than one person has been granted a licence in relation to the brothel, 44.94 fee units for each additional business name, divided by the number of licences granted in relation to the brothel; or
  - (c) on and after 1 July 2016—
    - (i) 261.76 fee units; and
    - (ii) if more than one room in the brothel is to be used or is used for sex work—
      - (A) if one person has been granted a licence in relation to the brothel, 49.08 fee units for each additional room; or
      - (B) if more than one person has been granted a licence in relation to the brothel, 49.08 fee units for each additional room, divided by the number of licences granted in relation to the brothel; and
    - (iii) if more than one business name is to be used or is used in carrying on the business—
      - (A) if one person has been granted a licence in relation to the brothel, 49.08 fee units for each additional business name; or
      - (B) if more than one person has been granted a licence in relation to the brothel, 49.08 fee units for each additional business name, divided by the number of licences granted in relation to the brothel.
- (2) For the purposes of section 46A(1) of the Act, the prescribed annual licence fee for a licence to carry on business as a sex work service provider of the kind referred to in the definition of *escort agency* in section 3 of the Act is—
  - (a) on and after 1 July 2014 and before 1 July 2015—
    - (i) 217.59 fee units; and
    - (ii) if more than one business name is to be used or is used in carrying on the business—

- (A) if one person has been granted a licence in relation to the escort agency, 40.80 fee units for each additional business name; or
  - (B) if more than one person has been granted a licence in relation to the escort agency, 40.80 fee units for each additional business name, divided by the number of licences granted in relation to the escort agency; or
- (b) on and after 1 July 2015 and before 1 July 2016—
  - (i) 239.67 fee units; and
  - (ii) if more than one business name is to be used or is used in carrying on the business—
    - (A) if one person has been granted a licence in relation to the escort agency, 44.94 fee units for each additional business name; or
    - (B) if more than one person has been granted a licence in relation to the escort agency, 44.94 fee units for each additional business name, divided by the number of licences granted in relation to the escort agency; or
- (c) on and after 1 July 2016—
  - (i) 261.76 fee units; and
  - (ii) if more than one business name is to be used or is used in carrying on the business—
    - (A) if one person has been granted a licence in relation to the escort agency, 49.08 fee units for each additional business name; or
    - (B) if more than one person has been granted a licence in relation to the escort agency, 49.08 fee units for each additional business name, divided by the number of licences granted in relation to the escort agency.

- (3) For the purposes of section 46A(1) of the Act, the prescribed annual licence fee for a licence to carry on business as a sex work service provider of the kinds referred to in the definitions of *brothel* and *escort agency* in section 3 of the Act is —
- (a) on and after 1 July 2014 and before 1 July 2015—
- (i) 217.59 fee units; and
- (ii) if more than one room in the brothel is to be used or is used for sex work—
- (A) if one person has been granted a licence in relation to the brothel and escort agency, 40.80 fee units for each additional room; or
- (B) if more than one person has been granted a licence in relation to the brothel and escort agency, 40.80 fee units for each additional room, divided by the number of licences granted in relation to the brothel and escort agency; and
- (iii) if more than one business name is to be used or is used in carrying on the business—
- (A) if one person has been granted a licence in relation to the brothel and escort agency, 40.80 fee units for each additional business name; or
- (B) if more than one person has been granted a licence in relation to the brothel and escort agency, 40.80 fee units for each additional business name, divided by the number of licences granted in relation to the brothel and escort agency; or
- (b) on and after 1 July 2015 and before 1 July 2016—
- (i) 239.67 fee units; and
- (ii) if more than one room in the brothel is to be used or is used for sex work—
- (A) if one person has been granted a licence in relation to the brothel and escort agency, 44.94 fee units for each additional room; or

- (B) if more than one person has been granted a licence in relation to the brothel and escort agency, 44.94 fee units for each additional room, divided by the number of licences granted in relation to the brothel and escort agency; and
- (iii) if more than one business name is to be used or is used in carrying on the business—
  - (A) if one person has been granted a licence in relation to the brothel and escort agency, 44.94 fee units for each additional business name; or
  - (B) if more than one person has been granted a licence in relation to the brothel and escort agency, 44.94 fee units for each additional business name, divided by the number of licences granted in relation to the brothel and escort agency; or
- (c) on and after 1 July 2016—
  - (i) 261.76 fee units; and
  - (ii) if more than one room in the brothel is to be used or is used for sex work—
    - (A) if one person has been granted a licence in relation to the brothel and escort agency, 49.08 fee units for each additional room; or
    - (B) if more than one person has been granted a licence in relation to the brothel and escort agency, 49.08 fee units for each additional room, divided by the number of licences granted in relation to the brothel and escort agency; and
  - (iii) if more than one business name is to be used or is used in carrying on the business—
    - (A) if one person has been granted a licence in relation to the brothel and escort agency, 49.08 fee units for each additional business name; or
    - (B) if more than one person has been granted a licence in relation to the

brothel and escort agency, 49.08 fee units for each additional business name, divided by the number of licences granted in relation to the brothel and escort agency.

## **10 Extension of time and late payment fees**

- (1) For the purposes of section 46B of the Act, the required fee for an application for an extension of time is—
  - (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 16.32 fee units; or
  - (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 17.97 fee units; or
  - (c) in the case of an application lodged on or after 1 July 2016, 19.63 fee units.
- (2) For the purposes of section 46B of the Act, the required fee for an application for a further extension of time is—
  - (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 16.32 fee units; and
  - (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 17.97 fee units; and
  - (c) in the case of an application lodged on or after 1 July 2016, 19.63 fee units.
- (3) For the purposes of section 46C of the Act, the required late payment fee is—
  - (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 32.64 fee units; and
  - (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 35.96 fee units; and
  - (c) in the case of an application lodged on or after 1 July 2016, 39.27 fee units.
- (4) For the purposes of section 46C of the Act, the required late lodgement fee is—
  - (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 32.64 fee units; or

- (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 35.96 fee units; or
- (c) in the case of an application lodged on or after 1 July 2016, 39.27 fee units.

### **11 Fee for application for approval of manager**

For the purposes of section 50(2) of the Act, the prescribed application fee is—

- (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 28.29 fee units; or
- (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 31.17 fee units; or
- (c) in the case of an application lodged on or after 1 July 2016, 34.04 fee units.

### **12 Fee for application to act as approved manager**

For the purposes of section 53A(2)(d) of the Act, the prescribed application fee is—

- (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 2.91 fee units; or
- (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 5.81 fee units; or
- (c) in the case of an application lodged on or after 1 July 2016, 8.72 fee units.

### **13 Inspection fees**

For the purposes of section 55(2)(b) of the Act, the prescribed fee is—

- (a) in the case of an application lodged on or after 1 July 2014 and before 1 July 2015, 0.89 fee units; or
- (b) in the case of an application lodged on or after 1 July 2015 and before 1 July 2016, 1.77 fee units; or
- (c) in the case of an application lodged on or after 1 July 2016, 2.66 fee units.



### **PART 3—TRANSITIONAL PROVISION**

#### **14 Old approval fee payable before 1 July 2014**

- (1) This regulation applies to an application under section 50(1) of the Act for the renewal of an approval if—
  - (a) the approval expires before 1 January 2015; and
  - (b) the fee for the application is paid on or after 1 July 2014.
- (2) Despite the commencement of these Regulations, if this regulation applies, the prescribed fee for the purposes of section 50(2) of the Act is the fee that would have been payable in respect of the application under regulation 8 of the Sex Work (Fees) Regulations 2004 as in force immediately before that commencement.

## ENDNOTES

### Endnotes

#### 1. General Information

The Sex Work (Fees) Regulations 2014 replace the Sex Work (Fees) Regulations 2004, S.R. No. 129/2004 which were due to expire on 26 October 2014 (see section 5 of the **Subordinate Legislation Act 1994**).

The title of the Sex Work (Fees) Regulations 2004 was changed from the Prostitution Control (Fees) Regulations 2004 to the Sex Work (Fees) Regulations 2004 by regulation 4 of the Prostitution Control (Fees) and Prostitution Control Amendment Regulations 2010, S.R. No. 97/2010.

## Explanatory Details

## Endnotes

<sup>1</sup> Reg. 4: S.R. No. 129/2004, as amended by S.R. No. 97/2010.

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## Appendix B: Disclaimer

### *Restrictions on Report Use*

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