

# Public Health and Wellbeing Regulations Sunset Review regulatory impact statement

Chapter 10: Escort agencies providing information to sex  
workers and clients



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workers and clients

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The following chapter is an extract of the regulatory impact statement for the proposed Public Health and Wellbeing Regulations (2019).

Information on infringements, consultation, implementation, evaluation and the exposure draft regulations are contained in the full regulatory impact statement available on the [Engage Victoria website](https://engage.vic.gov.au) <<https://engage.vic.gov.au>>.

This extract was prepared to assist stakeholders who access the report by accessing a specific category on the Engage website.

# Introduction (and invitation to comment)

## Overview

The Public Health and Wellbeing Regulations 2009 (the current regulations) were made under the *Public Health and Wellbeing Act 2008* (the Act) and are due to sunset on 15 December 2019. New regulations are needed to replace them.

The remaking process provides an opportunity to revisit whether regulations are still needed and, if so, whether there are ways to improve them.

Public health regulations provide a framework for businesses, councils and individuals to protect the health and wellbeing of Victorians. Understanding how these regulations, and any proposed changes, will impact on Victorian business and the Victorian community is critical to the effective operation of the regulatory framework.

The current regulations include several regulatory areas, and the subject matter varies widely. In some ways these regulatory areas are distinct in their nature; however, their overall objective gives effect to the Public Health and Wellbeing Act.

To the extent that the regulatory areas are different, the department consulted key stakeholders to ensure any issues were understood and the impact of proposed solutions would be acceptable. This preliminary consultation has informed the proposed regulations and a summary is provided in the 'Consultation' chapter.

## Purpose and objective

Victorians enjoy one of the highest standards of health and wellbeing in the developed world. This could not be achieved without laws and regulations that protect and promote public health and wellbeing.

## The Act

The current regulations were made under the Public Health and Wellbeing Act. The purpose of the Act is to provide a legislative framework that promotes and protects public health and wellbeing in Victoria.

The state has a significant role in promoting and protecting the public health and wellbeing of Victorians.

Public health and wellbeing includes the absence of disease, illness, injury, disability or premature death and the collective state of public health and wellbeing. Public health interventions are one of the ways in which the public health and wellbeing can be improved and inequalities reduced.

## The regulations

As set out in the Public Health and Wellbeing Act, the aim of the regulations is to achieve the highest attainable standard of public health and to prevent disease and illness while minimising costs for regulated industries.

Public health regulations provide a framework for businesses, councils and individuals in the practical application of the Act.

## The regulatory impact statement

The purpose of this regulatory impact statement is to provide information and analysis to review how these regulations, and any proposed changes, will affect Victorian business and the Victorian community and contribute to the effective operation of the regulatory framework for public health.

The current regulations are due to expire on 15 December 2019. New regulations are needed to replace them.

# Preparation of the new regulations

Before new regulations are made, the *Subordinate Legislation Act 1994* requires completion of the following four steps shown in Figure 1.

**Figure 1: The four steps of making new regulations**



## Preliminary consultation

The department undertook preliminary consultation with key stakeholders to inform development of the proposed regulations. The proposed regulations address a range of matters for giving effect to the Act and therefore different stakeholders were engaged on different matters.

A summary of the preliminary consultation that has occurred is provided in the ‘Consultation’ chapter of this regulatory impact statement.

## Public consultation: regulatory impact statement, evaluation and implementation

This regulatory impact statement has been prepared to meet the requirements of the Subordinate Legislation Act, enabling public consultation on the proposed regulations. The regulatory impact statement presents the range of matters addressed in the proposed regulations in separate chapters. Each chapter includes the regulatory objective for the matters addressed in the chapter, an assessment of the costs and benefits of the proposed regulations and possible alternatives.

In most cases the regulatory impact statement considered and analysed three regulatory options: to remove all regulation, to remake the current regulations without change, or to strengthen the requirements set out in the current regulations. The extent of the analysis of the regulatory options varies but is consistent with the need for regulatory change. In most cases the recommended option for each regulatory area is to strengthen the current regulations.

Each of the regulatory areas included within the regulatory impact statement has a specific implementation plan that will support awareness and understanding of any changes, preparedness and compliance. Information about implementing the proposed regulations can be found in the ‘Implementation’ chapter.

The proposed regulations will operate for up to 10 years. Evaluation has a key role in ensuring the intended improvements of the proposed regulations (appropriately effective and proportionate) are borne out and align with government objectives on an ongoing basis. Each of the regulatory areas included within the regulatory impact statement has a specific evaluation plan. Information about the evaluation, including public consultation, can be found at the end of the regulatory impact statement.

The proposed regulations are included as an attachment to this document.

## Consideration of submissions

Public comments and submissions will be considered before the new regulations are made.

## Final decision

The decision to make or not to make the proposed regulations will be informed by the public comments and submissions received. Notice of the decision will be published as soon as practicable after the decision has been made.

## Small business impact and competition assessment

Small businesses may disproportionately experience the impacts from regulatory requirements for a range of reasons, including relatively limited resources to interpret compliance requirements or to keep pace with regulatory changes, and the cumulative effect of different requirements.

Most of the proposed regulations propose simplified and streamlined regulatory definitions and requirements compared with the current regulations, particularly where stakeholder feedback has raised issues about ambiguity of the intention of regulations. Any regulatory proposal needs to be scrutinised carefully to assess whether it is having an adverse impact on the ability of firms or individuals to enter and participate in the market. In line with the *Victorian guide to regulation*, new legislation (both primary and subordinate) needs to demonstrate that it will not restrict competition, unless benefits of the restriction outweigh the costs and the objectives of the legislation can only be achieved by restricting competition.

In instances where restrictions on competition have been identified, the benefits of the restriction outweigh the costs and the objectives of the legislation can only be achieved by restricting competition. For example, the registration of a premises by local government for the purposes of infection control standards creates an additional cost for starting a health and beauty service business. However, this cost is offset by the reduced risk of disease in the community and the reduced risk of an infectious disease outbreak.

# Structure of the regulatory impact statement and the proposed regulations

This regulatory impact statement and the proposed regulations have grouped the regulations according to either how the regulations are administered or the regulation's purpose in the Act. These are broadly grouped into:

- regulations administered by councils
- regulations administered by the department
- regulations related to managing and controlling infectious diseases, micro-organisms and medical conditions
- other regulations.

## Regulations administered by councils

- Vector-borne infectious disease control
- Registered premises – infection control
- Aquatic facilities

## Regulations administered by the Secretary to the Department of Health and Human Services

- Cooling tower systems
- Legionella risks in certain premises (water delivery systems)
- Pest control

## Management and control of infectious diseases, micro-organisms and medical conditions

- Notifications of infectious diseases, micro-organisms and medical conditions
- Closed court orders for prescribed diseases
- Immunisation and exclusions – schools and childcare
- Escort agencies providing information to sex workers and clients

## Other regulatory provisions

- Prescribed senior officers (Chief Health Officer delegations)
- Tissue donations
- Consultative councils.

## What isn't included in this regulatory impact statement

### The Public Health and Wellbeing Act

The Public Health and Wellbeing Act is the legislation under which these regulations are made. The matters that can be set out in the regulations are confined to what is required under the Act. The requirements under the Act are not the subject of this review, only the details set out in the regulations. During the process of the review and consultation it is likely that potential improvements to the Act may be identified, but that is not the focus of this regulatory impact statement.

### Public Health and Wellbeing Regulations relating to prescribed accommodation

Regulations relating to prescribed accommodation will not be considered within this regulatory impact statement (rr. 13 to 27). Separate new regulations relating to prescribed accommodation will be made in 2020. In the interim, the operation of the prescribed accommodation regulations will be extended in their current form for 12 months to allow further time for review and consultation.

The extension of the prescribed accommodation regulations provides an opportunity to separate regulations relating to prescribed accommodation from the other regulations made under the *Public Health and Wellbeing Act 2008*. It is intended that the extended prescribed accommodation provisions will be contained in the renamed 'Public Health and Wellbeing (Prescribed Accommodation) Regulations 2009' and will operate separately from the proposed Public Health and Wellbeing Regulations 2019.

### Public Health and Wellbeing Regulations relating to HIV testing

The Public Health and Wellbeing Act prescribes special requirements for HIV testing and these requirements are included in the 2009 regulations. The need to review and modernise these requirements is an issue that a range of sector stakeholders have been raising for some years. Overwhelmingly, the sector has supported a repeal of relevant sections of the Act relating to pre and post HIV testing. The Victorian Parliament recently passed the Public Health and Wellbeing Bill 2019 to repeal the HIV testing specific provisions (ss. 131 and 132) on the basis that they stigmatise people with HIV and are outdated. As a result, the prescribed regulations will not need to be made.

# Invitation to comment

In accordance with the *Victorian guide to regulation*, the Victorian Government seeks to ensure that proposed regulations are well-targeted, effective and appropriate, and impose the lowest possible burden on Victorian businesses and the community.

The regulatory impact statement process involves assessing regulatory proposals and allows members of the community to comment on proposed regulations before they are finalised. Such public input provides valuable information and perspectives and improves the overall quality of regulations.

The Public Health and Wellbeing Regulations 2019 (the proposed regulations) will replace the Public Health and Wellbeing Regulations 2009 (the current regulations). A copy of the proposed regulations is published with this regulatory impact statement.

## **Public comment is invited on the regulatory impact statement and the proposed regulations.**

The consultation period is 60 days. Please note that all comments and submissions received will be treated as public documents.

## **Submission deadline**

Comments and submissions should be received by the Department of Health and Human Services no later than 5.00 pm, Monday 30 September 2019.

## **How to make a submission**

### **Preferred method**

The [Engage Victoria website](https://engage.vic.gov.au) <https://engage.vic.gov.au> is the preferred method for receiving submissions. The website includes specific questions for each regulatory area and allows for additional feedback to be provided.

### **Email**

If you are unable to use the preferred method above, submissions can be received by [emailing the department](mailto:phwa.enquiries@dhhs.vic.gov.au) <phwa.enquiries@dhhs.vic.gov.au>.

### **Post**

If you are unable to use the preferred method above, submissions can be received by post marked 'Submission to the Review of the Public Health and Wellbeing Regulations 2009' and addressed to:

Chief Health Officer  
Regulation, Health Protection & Emergency Management  
Department of Health and Human Services  
GPO Box 4057  
Melbourne VIC 3001

## **Where can I obtain copies of this regulatory impact statement and the proposed regulations?**

Copies of this regulatory impact statement and the proposed regulations can be obtained from the [Engage Victoria website](https://engage.vic.gov.au) <https://engage.vic.gov.au>.

## How can I be updated on the progress of the review?

The [Engage Victoria website](https://engage.vic.gov.au) <<https://engage.vic.gov.au>> enables you to register to receive updates on the progress of the review of the current regulations.

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This extract was prepared to assist stakeholders who access the report by accessing a specific category on the Engage website. This is not intended to limit the scope of submissions; the department welcomes submissions from all interested parties.

# Chapter 10: Escort agencies providing information to sex workers and clients

## Problem analysis

**Victoria regulates to minimise sexually transmitted infections (STIs) among sex workers. The prevalence of STIs is currently lower among sex workers than the general population.**

Victoria regulates the sex industry as part of its public health strategy to minimise the transmission of blood-borne viruses and STIs. This includes screening sex workers and providing information to clients and sex workers to help them make informed decisions.

Legislation controlling sex work in Victoria is primarily provided through the *Sex Work Act 1994* and associated regulations. The *Public Health and Wellbeing Act 2008* and associated regulations supplement this legislation to:

- help control infectious diseases, micro-organisms and medical conditions
- ensure sex workers and clients are given information and education about preventing STIs.

To this end, education and information about passing on STIs within escort agency services is a key element of the broad approach to reduce STIs.

The risk to public health can be broken down into the specific hazard, who is exposed and the vulnerability of the population.

### Hazard

The public health and wellbeing risks relate to the incidence, prevalence and burden of blood-borne viruses and STIs. Blood-borne viruses and STIs can pass between people via sexual contact and may have no immediate symptoms but can cause serious illness or death.

Sex workers in Australia have sustained low rates of STI transmission and high rates of condom use. In Victoria, sex workers have an extremely low STI prevalence – lower than the broader population – and an extremely high rate of condom use with their commercial clients.

### Exposure

Sex workers, as providers of sexual services, are exposed to sexual contact that may pass on blood-borne viruses and STIs. The public perception is that sex workers are at increased risk of STIs due to multiple sexual partners. Under the *Sex Work Act*, sex workers must take all reasonable steps to minimise the risk of acquiring or transmitting STIs while providing or receiving sexual services.

### Vulnerability

There may be increased risks for vulnerable groups such as:

- street-based sex workers
- at-risk young people
- people experiencing homelessness
- those recently released from prison.

However, these vulnerable groups don't cover the entire population of sex workers.

As both the specific hazards and the vulnerable population cannot be controlled for, the public health intervention focuses on the possible exposure.

The department provides medically accurate STI information to brothel and escort agencies to pass on to sex workers and clients to help minimise the transmission of blood-borne viruses and STIs. Further to this, STI information is readily available from many sources – the internet, sexual health centres and general practice clinics. Sex workers also play an important role in educating their clients on safe sex practices.

## Objective of the regulations

The objective of the regulations is to ensure agency-based sex workers and their clients can easily access written information in a variety of languages to help minimise the transmission of STIs. The regulations work as part of a broad suite of laws and education campaigns such as the *Sex Work Act 1994*.

## Requirements of the regulations

The regulations relate to s. 162(4) of the Act – ‘Information to sex workers and clients’, which states:

An escort agency proprietor must, in accordance with the regulations, provide easily accessible written information about the transmission of sexually transmitted infections in a variety of relevant languages for the benefit of sex workers and clients.

The regulations require an escort agency proprietor to provide relevant information about STIs if requested to do so by a sex worker or client.

## Options

- Option 1: Retain the current regulations without changes
- Option 2: Amend some aspects of the current regulations
- Option 3: Remove or reduce the requirements of the current regulations

### Option 1: Retain the current regulations without changes

#### **Maintain the requirement to provide information only on request**

The current regulations contain specific requirements for escort agencies to provide information about transmitting STIs, in a variety of languages, to clients and sex workers on request. This different requirement is because sex workers and clients using escort agencies do not meet at a brothel premises.

Maintaining the requirement would ensure escort agencies continue to forward relevant information regarding STI transmission if requested to do so.

The information being provided on request means that it is a low-impact approach, when a sex worker or client self-identifies that they are at risk of STI transmission. Compared with providing the information in a public manner such as a sign, this ensures that when a client or sex worker is actively seeking information on STIs, the information is provided and is accurate.

The information may be more effectively engaged with when provided on request by the escort agency because the business may be considered trustworthy – the client is already relying on discretion from the business and a sex worker has an ongoing working relationship with the business.

## Option 2: Amend some aspects of the current regulations

### Actively provide information to all sex workers and clients

Increasing the requirements for the escort agency to actively provide information regarding STI transmission could be introduced in line with similar requirements for brothels in the Act. In a brothel, this is typically a clearly visible sign in the brothel premises; however, the approach would have to be different for escort agencies because they do not operate from a fixed premise.

Accessible information forms part of broad education campaign supporting STI control in sex workers and operates alongside other measures such as regular STI screening, early detection and a supportive environment. Without the information provided as part of this regulation, it would be expected that information about STIs could be obtained by sex workers and clients from other sources such as a general practitioner, the department's website or non-government organisations.

Other non-government organisations that provide education to sex workers include:

- Resourcing health and Education (RhED), a specialist service for registered and unregistered sex workers that provides a range of material including STI information directly to sex workers, brothels and escort agencies on outreach visits
- the Melbourne Sexual Health Centre, one of the main clinics sex workers attend for STI screening certificates.

An active approach to providing information could require escort agencies to directly provide more information to sex workers and clients. This may be in the form of a physical brochure, email, text message or another appropriate form. The escort agency does not need to create this information because the department already develops and distributes relevant information in a variety of languages (as do some non-government organisations).

Implementing this approach would have different impacts on sex workers and clients. Providing information to sex workers is relatively low-impact and could be included alongside other administration paperwork (such as when starting employment). However, it may do little to improve information availability for sex workers. For example, if a sex worker also works in a brothel, this is a duplication of information. This same information is also available and displayed at STI screening centres.

Providing STI information directly to clients is likely to affect the operations of escort agencies. Information could be either provided by the escort agency to the client or given to the sex worker to provide it to the client. To be provided by the escort agencies, the business would have to collect personal details of clients to then disseminate the information. The department is not aware whether escort agencies current hold this information for worker safety purposes. However, because discretion is part of the escort agency service business model, this requirement may unintentionally increase the cost (or the perceived cost) for clients to book through an escort agency.

A sex worker could carry brochures to the client booking. Sex workers already bring a standard kit of items, including condoms and lubricant, to bookings; including brochures in this kit would be a relatively straightforward process. However, as bookings are charged by time, discussing the information during the booking with the client would either increase the time of the booking (and the cost) or reduce the amount of time spent on service provision. However, providing the information to all clients does not guarantee that clients would actively engage with the information.

## Option 3: Remove or reduce the requirements of the current regulations

### Reduce the available information for sex workers and clients

Reducing or removing the requirements would remove the obligation for escort agency operators to provide information on STIs to sex workers and clients on request.

In theory this would reduce the amount of information available. However, in practice it is not expected that this would have a meaningful impact on STI awareness among sex workers because there are a variety of other freely available information sources. There are also direct incentives, both legal and reputational, for sex workers to avoid being infected with an STI. The same incentives are present for clients of sex workers but to a lesser degree.

However, this approach would be in direct contrast to the approach for other regulated sex worker businesses that are required to provide STI information in the Act. Brothels and related businesses are required to provide information within the place of business, with the reduced requirement for escort agencies in recognition that there is no fixed place of business yet continue to be obligated to provide STI information if required.

## Impact analysis

To evaluate these options to maintain or expand the information that escort agencies provide to sex workers and clients, there are three criteria that will be considered:

- the impact and effectiveness of available STI information for clients and sex workers
- the effect on escort agency operations
- the contribution to controlling STI rates in the sex worker population.

The criteria above must balance the availability of information and the contribution to controlling STI rates in the sex worker population alongside the regulatory impacts for escort agencies to effectively implement the regulations.

If regulatory impacts are too high, this may have the unintended effect of increasing costs to such a level that either sex workers or clients choose to withdraw from the registered sector and move to the unregistered sector.

Consultations with escort agencies operating in Victoria has confirmed that the current regulations have been incorporated into their business operations. Escort agencies advised that sex workers are provided with appropriate resources (including condoms and lubricant) to adhere to broader STI control requirements.

Escort agencies raised concerns about implementing any additional requirements to provide more information to clients, due to privacy and discretion forming a key component of their business models. Clients seek confidentiality and discretion when using escort agency services. Escort agencies also noted that it may be difficult to get clients to receive and meaningfully engage with additional information about STIs.

It is not expected that option 2 (actively provide information to all sex workers and clients) would see a noticeable decrease in the STI rates in sex workers, given the other available sources of information to sex workers and the already low STI rates in sex workers compared with the broader population.

There may be benefits for actively providing STI information to clients. However, given other required practices of sex workers (such as the mandatory use of condoms), this greater awareness by clients is unlikely to contribute to better controlling STI rates in the sex worker population. Maintaining this

regulation would help educate clients whose understanding of STIs is low and reaffirm existing measures that have successfully contributed to a reduction in STIs.

Option 2 will have higher regulatory impacts compared with option 1, including new processes for escort agencies to more actively manage confidential information that may not be otherwise collected. This change of process and the impact on privacy, whether perceived or real, would be expected to increase the costs of escort agency operations.

Option 1 (maintain the requirement to provide information only on request) has reduced benefits because information is provided only on request and is provided to a smaller number of people. However, these people have self-identified themselves to be at risk. Although accessible through other channels, this information may be more effective coming from employers than an organisation without a pre-existing relationship. This is a benefit for sex workers.

In option 1, the escort agency takes a reactive approach, only responding on request, because there is no information captured by the department or by escort agencies about the number of times information on STIs has been requested by either sex workers or clients and then provided by an escort agency.

The effectiveness of regulation relies on sex workers and clients being aware of their right to request STI information. The requirement to provide information on request operates in the context of a number of available sources of information and the broader approach to STI rates in sex workers. This regulation can be considered effective as part of the range of measures contributing to the low STI prevalence and high rate of condom use among sex workers.

The main difference between option 1 and 2 is in the increased provision of information to clients in option 2 and the associated regulatory impact of escort agencies implementing systems that collect private information while maintaining privacy.

The preferred option is to maintain the requirement for escort agencies to provide information only on request. Compared with a requirement to actively provide STI information, this approach has a limited burden on industry while providing support to the efforts to control STIs in sex workers. It is unlikely that increasing the burden on escort agencies would meaningfully improve STI rates for sex workers, which are already lower than the broader population.

## Proposed approach

Option 1: Retain the current regulations without changes, maintaining the requirement for escort agencies to provide information only on request.

# Accessing the full regulatory impact statement

Information on infringements, consultation, implementation, evaluation and the exposure draft regulations are contained in the full regulatory impact statement available on the [Engage Victoria website](https://engage.vic.gov.au) <https://engage.vic.gov.au>.

This extract was prepared to assist stakeholders who access the report by accessing a specific category on the Engage website. This is not intended to limit the scope of submissions; the department welcomes submissions from all interested parties.

## Making a submission to the review

Public comment is invited on the proposed regulations and RIS. Please note that all comments and submissions received will be treated as public documents.

Comments and submissions should be received by the Department of Health and Human Services no later than **5.00 pm, Monday 30 September 2019**.

The Engage Victoria website is the preferred method for receiving submissions. Submissions can also be received by [emailing the department](mailto:phwa.enquiries@dhhs.vic.gov.au) <phwa.enquiries@dhhs.vic.gov.au>, or post, marked 'Submission to the Review of the Public Health and Wellbeing Regulations 2009' and addressed to:

Chief Health Officer  
Regulation, Health Protection & Emergency Management  
Department of Health and Human Services  
GPO Box 4057  
Melbourne VIC 3001

Copies of the RIS and proposed regulations can also be obtained from the [Engage Victoria website](https://engage.vic.gov.au) <https://engage.vic.gov.au/>.