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# RIGHTS AT WORK

USEFUL THINGS  
TO KNOW ABOUT:  
PERSONAL PROPERTY,  
SURVEILLANCE,  
YOUR HEALTH AND SAFETY  
AND SEXUAL HARASSMENT

## Everyone is entitled to a healthy and safe workplace<sup>1</sup>.

There are other rights you have when working which restrict what management at a workplace can do, including in relation to how management treat your property, and the use of surveillance devices. This fact sheet is for Victorian workers who provide sex services in sex-on-premises venues (brothels) or through escort agencies.

# YOUR PERSONAL PROPERTY, SURVEILLANCE DEVICES AND FINES/BONDS

## **YOUR PERSONAL PROPERTY**

There are limited circumstances in which management at a workplace can interfere with or search personal property you bring into the workplace. This includes what you may have in your handbag or backpack.

Management can only search or interfere with your personal property at the workplace if:

- » you have provided consent (such as in an employment contract);
- » management has given a lawful and reasonable direction in a policy (like to conduct security checks at entry and exit points of the premises); or
- » you have not provided consent but it is reasonably necessary.

Examples of when it may be reasonable to interfere with your personal property without your consent include:

- » where there is a reasonable belief your personal property may cause a risk to your health and safety or the health and safety of others; or
- » there is a medical emergency, such as the need to retrieve and administer an EpiPen to save your life.

Management does not have the right to conduct a search of your body without your consent and it is very unlikely it would be lawful or reasonable for management to ask you to consent to a body search. If they ask, you should seek legal advice before agreeing.

## **LEAVING PROPERTY BEHIND IN A WORKPLACE**

Sometimes you might leave your personal property behind after leaving a workplace. Unless you have donated or gifted the items to management, they remain your property.

You have the right to get your personal property back after you no longer work at a particular workplace. If you stop working at the workplace, you should try to arrange with your boss to get your property back. If management refuses to allow you to get your property you should seek legal advice to discuss your options. A person who refuses to return your personal property may have committed an offence, such as theft<sup>2</sup>.

## **RIGHT TO WORK IN AUSTRALIA AND IDENTIFICATION**

Employers are required to be satisfied a person has the government's permission to work in Australia. An employer may lawfully request you provide evidence of your right to work, such as proof of citizenship / residency or visa.

Passports are the property of their issuing governments. A person cannot take your passport away from you and keep it from you unless they are permitted to do so by law. If your passport has been taken away from you, you should seek legal advice immediately.

## **AUDIO AND VISUAL SURVEILLANCE DEVICES**

Many workplaces have installed surveillance devices. When used appropriately, surveillance devices can contribute to a safer and more secure workplace for workers.

Victorian law regulates the installation and use of microphones, cameras and tracking devices<sup>3</sup>.

A person cannot use a device to listen to and / or record a private conversation to which the person is not a party. A private conversation is one that the parties intend to keep between themselves which cannot be overheard by anyone else. An example of this includes discussions between a sex worker and a client about the services they wish to experience<sup>4</sup>.

A person cannot use a device to observe and / or record a private activity to which the person is not a party. A private activity means an activity which the individuals want to keep to themselves. Activities occurring outside a building or where someone else could observe them are not 'private'. Examples of private activities includes using a toilet, areas where workers are getting changed or providing sex services to a client at a brothel<sup>5</sup>.

## **FINES AND BONDS**

A private individual or business cannot lawfully fine you for any reason. They also cannot impose a bond or withhold your pay.

For example, you cannot be fined or have your pay withheld<sup>6</sup> for being late to work, damaging property, or refusing to work with a particular client.

If someone withholds your pay, asks you to pay a bond, or demands you pay a fine, you should seek legal advice.

# YOUR HEALTH AND SAFETY<sup>7</sup>

All workers are entitled to a work environment that is as far as reasonably possible safe and without risks to health. Any business where you work is required to provide safe systems of work. Businesses have similar obligations towards other individuals, such as clients. Businesses running brothels should provide the following facilities to promote health and safety in the workplace:

- » **condoms and lubricants:** must be provided free of charge
- » **lighting:** must be appropriate so you can check for signs of sexually transmissible infections
- » **signage:** safer-sex signs should be displayed, these should be displayed in the reception area and in every room
- » **showers/baths:** suitable for cleaning and sanitation, and
- » **communication devices:** all client rooms in brothels must have a communication device (e.g. an alarm button) that works and is easily accessible. Also escort agencies must provide you with a phone (or other communication device) so that you can contact the service provider.

## **NEGOTIATIONS ON YOUR BEHALF**

A person taking bookings on behalf of a sex worker must not misrepresent the worker's qualities or negotiate the sexual services to be provided by the worker.

## **RIGHT TO REFUSE TO PROVIDE SERVICES**

All people are legally entitled to refuse to engage in a sexual act with any person for any reason or withdraw consent they previously provided at any time. This includes sex workers.

In particular, sex workers may refuse to provide a service if they suspect a client has a sexually transmissible infection (STI), or if a client refuses to use a condom.

**As stated above, sex workers may refuse to see a client, refuse to provide a particular service, or withdraw consent previously provided, for any reason, at any time.**

If a person forces you (physically or verbally) to perform or participate in a sexual act without your permission, they have committed a criminal offence.

If this happens to you, you have (as soon as it is safe to do so) a range of options including:

- » calling triple zero (000);
- » notifying the business where you are working;
- » contacting your local police station, Gay and Lesbian Liaison Officers (GLLO), or Sexual Offences and Child Abuse Investigation Team (SOCIT); or
- » contacting your local peer sex worker organisation, Vixen Collective.

## **STI CHECK OBLIGATION**

If you are a sex worker in Victoria you are required to have a sexually transmitted infection (STI) test (including blood tests and swabs) every three months. This can be arranged by your doctor or at a specialist sexual health clinic, such as the Melbourne Sexual Health Centre.

After an STI check, the doctor should give you a 'Certificate of Attendance' which is valid for three months<sup>8</sup>. Brothel and escort agency workers will need this certificate to work. You do not have to wait for your results to have a certificate issued. Certificates can be issued in your working name and you can get multiple certificates (if for example you are working in more than one venue). You only need to supply your certificate of attendance, not the results of your test, to your manager/operator.

# SEXUAL HARASSMENT AND UNLAWFUL DISCRIMINATION

Laws in Victoria<sup>9</sup> and across Australia<sup>10</sup> protect workers against sexual harassment and unlawful discrimination at work.

## **SEXUAL HARASSMENT**

Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature that makes you feel offended, humiliated and/or intimidated where any reasonable person could see that it might offend, humiliate or intimidate you. Examples of sexual harassment can include unwanted touching as well as jokes about sexuality and gender identity.

**It does not matter whether you work in a brothel or an office - no one has the right to sexually harass you.** Sexual harassment is a form of unlawful discrimination. Continue reading for more details about discrimination.

Complaints about sexual harassment can be made under Victorian laws to the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or the Victorian Civil and Administrative Tribunal (VCAT), or under Federal laws to the Australian Human Rights Commission (AHRC). Their details are at the end of this information sheet. Strict time limits may apply, so if you believe you have been sexually harassed and want to raise a complaint, you should seek legal advice immediately.

## **UNLAWFUL DISCRIMINATION**

In Victoria, it is unlawful for management at your workplace to treat you less favourably than other workers because of your:

(a) age; (b) breastfeeding; (c) employment activity; (d) gender identity; (e) disability; (f) industrial activity; (g) lawful sexual activity; (h) marital status; (i) parental status or status as a carer; (j) physical features; (k) political belief or activity; (l) pregnancy; (m) race; (n) religious belief or activity; (o) sex; (p) sexual orientation; (pa) an expunged homosexual conviction; (q) personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

Similar protections exist under national (Federal) laws.

Treating someone less favourably than others because of one of these attributes is known as unlawful discrimination.

It is also unlawful discrimination for management at your workplace to fail or refuse to make reasonable changes to your working arrangements to accommodate a disability. This applies unless making the changes would impose an unjustifiable hardship on the business.

If you believe you have been treated less favourably because of one of the above attributes or that your workplace has unreasonably refused to accommodate your disability, you should seek legal or other advice. See the information at the end of this fact sheet for more details.

Complaints about unlawful discrimination can be made under Victorian laws to the VEOHRC or the VCAT, or under Federal laws to the AHRC. Their details are at the end of this information sheet. Strict time limits may apply, so if you believe you have experienced unlawful discrimination and want to raise a complaint, you should seek legal advice immediately.



## **GENERAL PROTECTIONS CLAIMS** <sup>11</sup>

A person (such as an employer), must not take any 'adverse action' against another person (such as an employee), because that person has a workplace right, has exercised a workplace right or proposes to exercise that workplace right. These protections can also apply to independent contractors in certain cases.

'Workplace rights' include making complaints about employment, taking any form of leave, or proposing to do these things.

It is also generally unlawful to take adverse action against someone because they are off work on sick leave or because they have a 'protected attribute'. Protected attributes include being pregnant or breastfeeding or having family responsibilities.

Adverse actions that can be taken against an employee or potential employee might include:

- » dismissing them
- » not giving them their legal entitlements
- » changing their job to their disadvantage
- » treating them differently than others
- » not hiring them
- » offering them different (and unfair) terms and conditions, compared to other employees.

You can make a claim to the Fair Work Commission if you believe your employer has taken 'adverse action' against you because you have exercised or proposed to exercise a workplace right, or because you have a protected attribute.

# CONTACTS

If you have further questions about your rights, please contact the following organisations:

## **VIXEN COLLECTIVE**

Vixen Collective promote the cultural, legal, human, occupational and civil rights of all sex workers. You can phone them on Vixen Collective's peer support line 0414 275 959 or email [vixencollectivemelbourne@gmail.com](mailto:vixencollectivemelbourne@gmail.com).

## **RHED**

Resourcing health & Education in the sex industry (RhED) provides site based and outreach services in collaboration with relevant programs and agencies. You can contact RhED by email [sexworker@sexworker.org.au](mailto:sexworker@sexworker.org.au), via their website [sexworker.org.au](http://sexworker.org.au) or call them on 1800 458 752.

## **ST KILDA LEGAL SERVICE (SKLS)**

SKLS receives referrals for legal assistance from sex worker organisations. It provides free legal assistance to residents in the cities of Port Phillip, Stonnington and Bayside, and runs specialist programs including a Community Outreach Program, Family violence Program, and LGBTIQ Legal Service. You can contact them via email [info@skls.org.au](mailto:info@skls.org.au) or phone on (03) 8598 6635.

## **CONSUMER AFFAIRS VICTORIA**

Consumer Affairs oversees the licensing system of sex workers. You may make a complaint against a sex work service provider for failing to comply with its obligations by lodging a complaint at [consumer.vic.gov.au/contact-us](http://consumer.vic.gov.au/contact-us) or by calling them on 1300 55 81 81.

## **FAIR WORK COMMISSION**

The Fair Work Commission is the place to make an unfair dismissal claim, general protections claim, or application to stop workplace bullying. You can lodge a claim online at [fwc.gov.au/disputes-at-work/how-the-commission-works/lodge-application/online-lodgment-service](http://fwc.gov.au/disputes-at-work/how-the-commission-works/lodge-application/online-lodgment-service)

The Fair Work Commission can also deal with disputes under the *Sex Industry Award 2010*.

Their website is [fwc.gov.au](http://fwc.gov.au) and you can call them on 1300 799 675

## **FAIR WORK OMBUDSMAN**

The Fair Work Ombudsman is there to help you understand your rights and responsibilities at work. Their website is [fairwork.gov.au](http://fairwork.gov.au)

You can contact them or check out their website for any question about workplace entitlements. This includes being an independent contractor or an employee and checking pay rates and conditions.

You can also make a complaint to the Fair Work Ombudsman if you believe you are not being given the right entitlements.

You can contact the Fair Work Ombudsman on 13 13 94 or make an anonymous complaint at [fairwork.gov.au/how-we-will-help/how-we-help-you/anonymous-report](http://fairwork.gov.au/how-we-will-help/how-we-help-you/anonymous-report)

## **AUSTRALIAN HUMAN RIGHTS COMMISSION**

Complaints about unlawful discrimination can be made under Federal laws to the Australian Human Rights Commission.

Complaints to the Australian Human Rights Commission must be in writing. You can do make a complaint online at [humanrights.gov.au/complaints/make-complaint](https://humanrights.gov.au/complaints/make-complaint)

If you would like the Commission to send you a hard copy complaint form or if you need assistance to write down your complaint, please call their National Information Service on 1300 656 419

## **VICTORIAN EQUAL OPPORTUNITY AND HUMAN RIGHTS COMMISSION**

If you feel you have been discriminated against, sexually harassed, victimised or vilified, you or someone on your behalf can make a complaint under Victorian laws to the Victorian Equal Opportunity and Human Rights Commission.

A complaint can be made in any language and they can arrange a free interpreter in your language or a sign language interpreter, if required. They can also help you draft your complaint if you need assistance.

You can contact the Victorian Equal Opportunity and Human Rights Commission on to make a complaint on 1300 292 153 or online at [humanrightscommission.vic.gov.au/discrimination/making-a-complaint](https://humanrightscommission.vic.gov.au/discrimination/making-a-complaint)

## **WORKSAFE**

WorkSafe investigates and prosecutes breaches of health and safety laws. If you believe your workplace has unsafe work practices you can contact WorkSafe by visiting [worksafe.vic.gov.au/contact](https://worksafe.vic.gov.au/contact) or by calling 1800 136 089.

# REFERENCES

1. *Occupational Health and Safety Act 2004* (Vic) s4.
2. Criminal laws, such as the *Crimes Act 1958* (Vic), outline some offences relating to the theft of property.
3. *Surveillance Devices Act 1999* (Vic)
4. *Ibid* s6.
5. *Ibid* s7. See also *Ibid* s9B, which prohibits employers from installing surveillance equipment in a workplace toilet, washroom, change room or lactation room.
6. *Fair Work Act 2009* (Cth) pt 2-9 div 2.
7. Laws relating to health and safety rights and obligations in the sex industry are principally contained within the *Public Health and Wellbeing Act 2008* (Vic), *Sex Work Act 1994* (Vic) and the *Sex Work Regulations 2016* (Vic).
8. For brothel and escort agency workers, see *Sex Work Act 1994* (Vic) s19(2). For sex workers generally, see *Sex Work Act 1994* (Vic) s20.
9. Most Victorian anti-discrimination laws are contained in the *Equal Opportunity Act 2010* (Vic).
10. There are Commonwealth laws which overlap with Victorian anti-discrimination laws. An example of such a law is the *Sex Discrimination Act 1984* (Cth).
11. General protection claims are addressed in Part 3-1 of the *Fair Work Act 2009* (Cth).



The information in this booklet is of a general nature. **For detailed and up-to-date advice contact a lawyer.**

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