



**Victorian Equal Opportunity
& Human Rights Commission**

Guideline: Sex work discrimination

**Your rights and
responsibilities under the
Equal Opportunity Act 2010**

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From the Commissioner

May 2023

Everyone has the right to be treated fairly and to participate fully in society, regardless of the work they do. However, for people who work in the sex industry, discrimination has been a common experience.

Decriminalisation of sex work is essential for the rights of sex workers. It will act to remove discrimination and other obstacles that sex workers and their advocates face when seeking to uphold their rights. Decriminalisation is an important first step towards recognising sex work as legitimate work. The removal of the licensing system and repeal of the *Sex Work Act 1994 (Vic)* will enable sex work to be treated as any other type of work, which will be crucial for destigmatising the occupation.

The Victorian Equal Opportunity and Human Rights Commission, as Victoria's equal opportunity and human rights regulator, welcomes the Victorian Government's review into the decriminalisation of sex work in Victoria and the corresponding reforms that have been introduced as part of the *Sex Work Decriminalisation Act 2022 (Vic)*.

As part of these reforms, the *Equal Opportunity Act 2010 (Vic)* has been amended so that it is now unlawful to discriminate against a person on the basis of their profession, trade or occupation, such as being a sex worker (unless an exception applies). More sex workers will also now be able to rely on the protected attribute of 'lawful sexual activity'.

The Commission hopes that this strengthened discrimination protection will help reduce sex work discrimination and the social stigma around sex work, and promote the health, wellbeing and human rights of all sex workers in Victoria.

To support this, we are pleased to present this guideline – an essential tool for all duty holders in Victoria. The Commission is committed to supporting duty holders to meet their legal obligations so that sex work discrimination can be addressed and prevented at the earliest possible stage.

We are grateful to the current and former sex workers and sex industry businesses who have been involved in our consultations and have allowed us to share their stories and reflections throughout this guideline. Through our consultation we heard stories of the impact of sex work discrimination across all areas of public life.

This guideline provides a comprehensive best practice framework and encompasses six clear minimum standards that duty holders must meet in order to comply with their positive duty to prevent sex work discrimination. The guideline also provides important information for sex workers, workers in the sex industry and sex work advocates on their rights.



A handwritten signature in black ink, appearing to read 'Ro Allen'.

Ro Allen
Victorian Equal Opportunity and Human Rights Commissioner

Definitions

Key terms	
Cisgender	A person whose gender identity corresponds with the sex the person had or was designated at birth. ¹
Cissexism	Prejudice against people who are not cisgender (see above). ²
Criminalisation	The act or process of making something illegal. ³ In criminology, criminalisation is the process whereby behaviours and individuals are transformed into crimes and criminals. ⁴
Disability	Disability includes: <ul style="list-style-type: none"> • physical, psychological or neurological disease or disorder • illness, whether temporary or permanent • injury, including work-related injuries.
Discrimination	Discrimination can be either direct or indirect: <ul style="list-style-type: none"> • Direct discrimination happens when someone is treated unfairly because of an attribute protected by the Equal Opportunity Act. • Indirect discrimination happens when there is an unreasonable requirement, condition or practice that disadvantages a person, or a group of people, who possess a protected attribute.⁵
Duty holder	Anyone who has legal responsibilities under the Equal Opportunity Act. This includes employers, providers of accommodation, education, goods and services, local government, clubs and sporting organisations. ⁶
Gender inequality	The legal, social and cultural situation in which sex or gender are determinative in terms of a person's access to, or enjoyment of, rights. This encompasses assumptions that are made about the social and cultural role that a person ought to play in society based on their sex or gender. ⁷
Home-based sex industry business	A business that provides sex services from home, also known as 'incalls'. This definition can include services provided by individual sex workers.
Homophobia, transphobia and biphobia	Prejudice or unfavourable treatment towards people based on their sexuality or gender identity. It can range from the use of offensive language to bullying, abuse and physical violence, through to systemic barriers. ⁸
Lawful sexual activity	Choosing or not choosing to take part in any form of sexual activity that is legal in Victoria, including sex work. ⁹
Positive duty	Under the Equal Opportunity Act, the positive duty is the legal obligation of duty holders to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible. ¹⁰ Please refer to Section 4.1 for further detail.

Profession, trade, occupation	All these terms hold their ordinary meanings. Please refer to Section 3.1.1 for further discussion.
Reasonable adjustments	Under the Equal Opportunity Act, employers are required to make reasonable adjustments for a person living with disability. Reasonable adjustments are changes that must be made if someone needs them in order to: <ul style="list-style-type: none"> • take part in the recruitment process • perform the genuine and reasonable requirements of the job. Adjustments can vary from minor changes such as to work hours or the performance requirements of the job to larger changes that require specific equipment or some structural change to the workplace.
Rights holder	A person who has rights under the Equal Opportunity Act, including the right to not be discriminated against on the basis of a profession, trade or occupation. For the purposes of this guideline, rights holders include current and prospective employees, tenants, residents, students, clients, consumers, club members and sporting participants. ¹¹
Sex industry business	Any business that provides sex services, such as brothels, parlours and escort agencies. The term can encompass individual sex workers. For sex industry businesses that provide services onsite, these can also be referred to as 'sex services premises' (see below), especially in reference to the planning scheme.
Sex services premises	After 1 December 2023, the Victoria Planning Provisions will define sex services premises as premises used to sell services involving the use or display of a person's body for the sexual arousal or sexual gratification of another person. ¹² This definition includes sex industry businesses that offer services onsite, such as brothels and massage parlours. This definition excludes strip clubs and sex-on-premises venues. ¹
Sex work/sex services	The definition of 'sex work' (used interchangeably with 'sex services') is broad and captures the many different forms and degrees of formality which sex work may encompass. Sex work is currently defined in the <i>Sex Work Act 1994</i> ; however, this legal definition will be superseded by the new definition contained in the <i>Sex Work Decriminalisation Act 2022</i> . That Act will amend the <i>Crimes Act 1958</i> on 1 December 2023 to include a definition of 'commercial sexual services', which broadly describes the provision of services which involve the use or display of the body of a person providing services for the sexual arousal or sexual gratification of others for: a) commercial benefit; or b) payment; or c) reward. ¹¹ Sex work can also be defined simply as services that involve a person participating in a sexual activity with another person in return for payment or reward.
Sex work discrimination	Sex work discrimination occurs when a sex worker is treated unfairly in an area of public life because they are a sex worker. ¹³ It is a subset of discrimination on the basis of profession, trade or occupation, lawful sexual activity or because of personal association.

I As per amendment VC217 of the Victoria Planning Provisions. For more information on this exclusion visit: planning.vic.gov.au/policy-and-strategy/decriminalisation-of-sex-work-in-victoria.

II Under the definition in the *Sex Work Decriminalisation Act 2022*, this includes circumstances where the commercial benefit, payment or reward is given to another person, as well as circumstances where the reward is the supply of a drug of dependence.



CHAPTER 1

About this guideline

1. About this guideline

This guideline provides information about sex work discrimination and the relevant protections under the *Equal Opportunity Act 2010* (Vic)

The guideline focuses primarily on discrimination experienced by sex workers and other workers in the sex industry; however, discrimination on the basis of the attribute 'profession, trade or occupation' can occur on the basis of any profession, trade or occupation outside of sex work.

In addition to the requirement not to discriminate, duty holders – such as employers, providers of goods and services, and accommodation providers – must take reasonable and proportionate measures to eliminate discrimination, including on the basis of someone's profession, trade or occupation. This is known as the 'positive duty' and extends to all forms of unlawful conduct (discrimination, sexual harassment and victimisation).¹⁴ This means that it is not enough to only respond to complaints as they arise; duty holders must also take proactive steps to prevent unlawful conduct from occurring in the first place. This positive duty acknowledges that duty holders are best placed to respond to and prevent discrimination at the organisational level. This guideline sets out six minimum standards that all organisations must follow in order to comply with the positive duty.

A duty holder is anyone who has legal responsibilities under the Equal Opportunity Act. This includes employers, providers of accommodation, education or goods and services, local government, clubs and sporting organisations.

It is crucial that duty holders understand their legal obligations to not discriminate against rights holders such as staff, tenants, students, clients, consumers, club members and sporting participants and that they also actively prevent discrimination, sexual harassment and victimisation within their organisation.

In addition to the requirement to comply with the positive duty, employers can also be liable if their employee discriminates against someone because of their profession, trade or occupation and the employer fails to take reasonable steps to prevent it.

In complying with this guideline, duty holders are taking demonstrable steps towards meeting their positive duty obligations, as well as their obligation not to discriminate, which will reduce the risk of vicarious liability under the Equal Opportunity Act and create an environment where human rights are respected and everyone is treated fairly and with dignity.

Chapter 1 provides information on this guideline including the purpose, the Commission's authority in developing the guideline, a brief history of discrimination faced by sex workers, an outline of the consultation process undertaken in the preparation of this guideline and key definitions.

1.1 Audience

This guideline was written for all Victorian duty holders to provide information and assistance in meeting their legal obligations under the Equal Opportunity Act, including the positive duty. It provides practical guidance on how to prevent and respond to sex work discrimination.

This guideline was also developed to support rights holders, including current and former sex workers and other people working in the sex industry, who have experienced discrimination on the basis of their occupation. The guideline clarifies their rights and the responsibilities owed to them by duty holders and clarifies who is able to bring a complaint of discrimination (see Section 5.5 for more information on who is able to bring a complaint).

1.2 Authority

The Victorian Equal Opportunity and Human Rights Commission (**the Commission**) is an independent statutory body with responsibilities under the following Victorian laws:

- the Equal Opportunity Act
- the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**the Charter**)
- the *Racial and Religious Tolerance Act 2001* (Vic)
- the *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic).

Our role is to protect and promote human rights and to eliminate discrimination, sexual harassment, victimisation and change or suppression practices, to the greatest extent possible. This is done through a range of functions, including resolving complaints and reports, completing research, educating, advocating for Victorians, monitoring the operation of the Charter and enforcing the Equal Opportunity Act, Racial and Religious Tolerance Act and Change or Suppression (Conversion) Practices Prohibition Act.

This guideline is not legally binding. However, a court or the Victorian Civil and Administrative Tribunal (**VCAT**) may consider whether a duty holder has complied with this guideline when considering whether discrimination has occurred.

The Commission may also use the guideline when we:

- investigate systemic issues of sex work discrimination
- conduct organisational reviews
- educate duty holders
- assist Victorians to understand their rights.

This guideline does not cover every possible situation and circumstance that duty holders may encounter. If you have a matter you need to clarify, consider seeking legal advice. If you require more information on sex work discrimination, you can contact the Commission's free Enquiry Line on 1300 292 153.

The minimum standards set out in Chapter 4 have been adapted from the Commission's six minimum standards for general compliance with the positive duty. The standards have been tailored to provide specific guidance on how to eliminate sex work discrimination.

1.3 Consultation

This guideline has been developed in consultation with the community and stakeholders under s 148 of the Equal Opportunity Act.¹⁵ The Commission consulted sex worker advocacy organisations, support services, sex industry businesses, and medical and community service providers, as well as other experts on sex work discrimination.

The Commission would like to thank Vixen, Scarlet Alliance, St Kilda Gatehouse Inc., Southside Justice, RhED, Sex Work Law Reform Victoria, Working Man, the Australian Adult Entertainment Industry Inc. and Estelle Lucas, as well as others, for their input into these consultations.

The Commission has also consulted duty holders from selected areas where sex work discrimination is more likely to occur.

These consultations confirmed that stigma and discrimination are common experiences for sex workers in areas of public life in Victoria. Stigma and discrimination have had, and continue to have, a profound negative impact on their ability to secure housing, find employment and access services. This process of consultation has informed the guideline and shaped our understanding of the key issues in achieving substantive equality for sex workers.





CHAPTER 2

Sex work decriminalisation

2. Sex work decriminalisation

Chapter 2 provides information on the reforms introduced by the Sex Work Decriminalisation Act, including the new protection for sex workers against discrimination under the Equal Opportunity Act.

2.1 About the Sex Work Decriminalisation Act

“I hope that the decriminalisation of sex work in Victoria will be helpful in myself and my peers being able to access essential services that everyone else is entitled to, without fear of judgement and prosecution.”

Alice, Understanding the health and social wellbeing needs of sex workers in Victoria 2022¹⁶

The *Sex Work Decriminalisation Act 2022 (Vic)* has removed some offences for engaging in sex work and, once fully implemented, will dismantle the licensing framework, enabling sex work to be regulated like any other service business.

Decriminalisation under the Sex Work Decriminalisation Act is being introduced in two stages.

The **first stage** of the reforms commenced on 10 May 2022 and included:

- the decriminalisation of street-based sex work in most locations (see below)
- the repeal of offences for working with a sexually transmitted infection (**STI**) and requirements to undergo regular STI testing for workers in sex industry businesses
- the repeal of offences for individual sex workers not using safer sex practices
- the repeal of the small owner-operator sex work service provider (or individual sex worker) register
- changes to advertising controls applicable to the sex industry
- amendments to the Equal Opportunity Act to protect workers from discrimination by creating a new protected attribute of ‘profession, trade or occupation’ and repealing s 62, meaning that accommodation providers may no longer discriminate against sex workers.

The **second stage**, due to commence on 1 December 2023, includes:

- the abolition of the sex work service provider licensing system by repealing the *Sex Work Act 1994 (Vic)*
- the re-enactment of offences relating to children and coercion in other

legislation to ensure continued operation of these offences following repeal of the Sex Work Act

- changes to the planning scheme to treat sex industry businesses like other businesses and enable sex work to occur in homes^{III}
- the establishment of appropriate liquor controls for the sex industry
- the repeal of brothel and escort agency provisions in the *Public Health and Wellbeing Act 2008 (Vic)* to remove specific sex industry controls.

By 1 December 2023, the Sex Work Act will be repealed and sex work will be regulated using existing frameworks such as occupational health and safety (**OHS**) and workplace injury compensation (via WorkSafe). For further information regarding relevant legislative changes as part of the Sex Work Decriminalisation Act, see Annexure.

Decriminalisation in most locations: while sex work will be decriminalised in most circumstances in Victoria, street-based sex work near schools or childcare services remains a criminal offence if taking place between 6am and 7pm. The same applies to places of worship, where engaging in street-based sex work is an offence between 6am and 7pm or at any time on designated days, such as during religious festivities.^{IV}

2.2 Licensing framework

“Under Victoria’s licensing and criminalisation framework, sex workers have been forced to make choices based on the dangerous and unworkable requirements of the licensing system, rather than our health and safety. The decriminalisation of sex work in Victoria is essential to recognising sex work as work and supporting sex workers, and is a crucial first step towards rectifying many years of harm and discrimination against Victorian sex workers.”

Dylan O’Hara – Manager, Vixen¹⁷

The Sex Work Act, which will be repealed in December 2023, regulates the industry using a licensing system (and previously also a registration system, prior to 10 May 2022). Offences still exist for sex work service providers that operate without a licence.¹⁸ Sex workers are also committing an offence up until 1 December 2023 if they receive clients at home or in a hotel room booked by them – also known as ‘incalls’.

Prior to 10 May 2022, sex workers were also deemed to be committing an offence if they:

- engaged in street-based sex work
- engaged in sex work and were not registered on the small owner-operator sex work service provider register

III Home-based sex industry businesses must meet the requirements of all home-based businesses as listed in the Victorian Planning Provisions.

IV S 28 of the *Sex Work Decriminalisation Act 2022 (Vic)* (or s 38B of the *Summary Offences Act 1966 (Vic)*).

- provided sex services without being able to prove they had attended a mandatory sexual health check within the past three months
- provided sex services while having an STI or being HIV+, or
- provided sex services without using a condom.¹⁹

The licensing system is outdated, and Victorian sex workers and sex work services providers find it difficult to navigate. Sex workers report that it is burdensome and restricts their autonomy over their work.²⁰ Although it is difficult to determine actual figures, many experts contend that the majority of sex work performed in Victoria occurs outside the licensing system, which means that many in the sex industry operate unlawfully.^v This marginalisation of the sex industry has made it difficult for workers to access services, including from police, or to administer their own workplace health and safety measures.²¹ It has also entrenched and reinforced existing stigma against sex workers.²²

The removal of the licensing scheme will enable sex work to be fully recognised as work. It will also begin to address the harm and discrimination that sex workers have faced and continue to face in Victoria.

2.3 Drivers of sex work discrimination

Discrimination is often derived from one group's prejudice towards another group on the basis of an actual or perceived difference, which leads a person to treat another unfavourably because of their membership of that group.²³ Prejudice is often based on some form of difference, which either consciously or unconsciously leads to unfair treatment.²⁴ For example, this perceived difference could relate to appearance, ability, religion, culture, languages or approach to life or work. Discrimination can also occur structurally or indirectly, where systems are not adequately designed for a particular social group and this systemic failure has a negative impact on that group.²⁵

“I was outed as a sex worker to my landlord, so they evicted me a week before Christmas when all the real estate offices are closed. I was couch-surfing for three months before I could find a place. Housing is a basic human right. Access to housing shouldn't be dependent on how willing or able I am to conform to conservative sexual morality.”

Quote provided by Vixen from a Victorian sex worker²⁶

There is a long history of sex workers across the world experiencing stigma and prejudice because of their work.²⁷ The drivers of sex work discrimination are complex and include, but are not limited to: social norms around gender, sexuality, sex and morality; assumptions about victimhood; and the historical criminalisation of sex work. By understanding the varied causes of discrimination against sex workers, everyone, especially duty holders, can begin to prevent it from happening in the first place.

All the following drivers can be compounded by intersectional forms of stigma and prejudice. See Section 3.5 for a discussion of intersectional discrimination.

^v A minority of sex workers and sex work businesses operated legally, with the majority operating outside the law in underground, unregulated environments. See lawreform.vic.gov.au/wp-content/uploads/2021/07/Sub_33_Sex_Work_Law_Reform_Victoria_final.pdf.

2.3.1 Gender inequality, homophobia, cissexism and transphobia

One of the key drivers of prejudice and negative attitudes towards sex work is the historical and prevailing social norms or rules that exist around sex, gender and sexuality.^{VI} Women who work in sex work are defying these conventions, particularly in terms of sexual activity.²⁸ For instance, norms that seek to control women's bodies and sexuality often position men as sexually assertive to the exclusion of other genders.²⁹ Meanwhile, women are positioned as passive, only engaging in sex in sanctioned circumstances, such as within marriage.³⁰ In this way, the nature of sex work challenges deeply ingrained norms or expectations, and sex workers experience prejudice and marginalisation as a result. Some sex workers also experience prejudice that is based in **homophobia, cissexism and transphobia**.³¹ For instance, trans people do not conform to norms around binary gender, which can compound with other norms around sexuality and sex, meaning that trans sex workers are met with compounding levels of prejudice.³² Rigid and harmful attitudes regarding sex, gender and sexuality can therefore reinforce prejudice against sex workers, which drives discrimination.



VI Much of the analysis around the role of social gender norms (and also norms around sex and sexuality) in patriarchal societies comes from feminist academics and social theorists such as Judith Butler, Simone de Beauvoir and Michel Foucault. See Judith Butler, 'Performative acts and gender constitution' (1990) *Theatre Journal* 40(4) 270, 282.

2.3.2 Assumptions regarding agency and victimhood

“One of the major problems of the narrative that all sex work is exploitation by men against all women (besides the fact it denies the realities of the sex and gender diversity of sex workers and our clients) is that it damages our ability to seek better working conditions, to access justice for crimes against us and to stand up for our rights as sex workers. When all sex work is framed as exploitation, how can we advocate for redress against actual violations of our labour and human rights?”

*Jules Kim, former CEO of Scarlet Alliance*³³

Another driver of prejudice against sex work stems from a misconception that all sex workers are inherently victims of sexual violence because of their work.³⁴ This myth perpetuates the idea that sex workers lack agency and often conflates sex work with violent practices such as sex trafficking or sex slavery.³⁵ It is important to clarify the distinction between non-consensual sex and sex work. Sex work necessarily involves consensual sexual activity, otherwise it is a crime against sex workers.³⁶ However, it is also important to note that while sex work involves sex that is consensual, sex workers are not in a permanent state of consent to any and all violence, sexual assault and exploitation. These assumptions create harmful stereotypes about sex work and increase stigma and prejudice.³⁷

In reality, sex workers negotiate the provision of sex services in exchange for remuneration and each sex worker has different boundaries regarding what services they consent to provide and what remuneration they expect to receive. The best way to promote the rights of sex workers is to provide access to justice services, workplace health and safety, and avenues for resolving workplace disputes.³⁸

2.3.3 Criminalisation of sex work

“As long as the police are our prosecutors, and sometimes even our perpetrators, they cannot be seen as our protections, which is all they should be.”

*Lexy, Understanding the health and social wellbeing needs of sex workers in Victoria 2022*³⁹

Prejudice against sex workers in Victoria has also been reinforced and entrenched by criminalisation. Criminalisation is the process whereby behaviours and individuals are transformed into crimes and criminals.⁴⁰ The police have historically played a key role in prosecuting criminal offences relating to sex work, although this is beginning to shift now that several offences relating to sex work have been removed. Having a system whereby offences existed for certain types of sex work, such as street-based sex work, meant that some types of sex work constituted crimes. This perpetuated the notion that sex workers and clients were deviants,⁴¹ which had the effect of entrenching stigma and prejudice and thus driving sex work discrimination.

It also permitted individuals, organisations and institutions to treat sex workers unfairly, as there was often little recourse for workers operating outside the licensed sex industry. For instance, sex workers had no recourse through discrimination protections under the Equal Opportunity Act prior to 10 May 2022.

With licensing ending in December 2023 and the new anti-discrimination protections for sex workers already in force, Victoria has taken the necessary first step towards recognising sex work as work and creating the conditions to eliminate stigma and discrimination.

2.4 Prevalence of sex work discrimination

Sex workers in Victoria have reported experiencing discrimination due to their status as sex workers in many different areas of public life.^{VII} Discrimination can have devastating impacts on a person's safety, housing, financial stability, mental health and overall wellbeing. Research has consistently found that the health of sex workers is affected by stigma, prejudice and, prior to the 2022 Victorian reforms, the criminalisation of sex work.⁴²

In 2020, Scarlet Alliance conducted research in partnership with the Centre for Social Research in Health, surveying sex workers across Australia^{VIII} about their experiences of stigma and discrimination.⁴³ It found that 96 per cent reported experiencing some form of stigma or discrimination related to their sex work within the previous 12 months, including 34 per cent who indicated that this 'often' or 'always' occurred.⁴⁴ 91 per cent of participants had experienced negative treatment by health workers, including 24 per cent who either 'often' or 'always' experienced this.⁴⁵

Research has also found that some health workers hold prejudicial views that may lead them to discriminate against sex workers, with 31 per cent self-reporting that they would behave negatively towards sex workers because of their work.⁴⁶ Among the general public, this percentage was 64 per cent.⁴⁷

VII This is based on consultations the Commission conducted with sex worker support organisations in 2022.

VIII This data is drawn from across Australia, not just within Victoria and in some instances is specific to the health sector but consultation determined this is illustrative of the prevalence of this discrimination overall.



CHAPTER 3

Understanding the Equal Opportunity Act

3. Understanding the Equal Opportunity Act

The Equal Opportunity Act protects current and former sex workers from being unfairly treated in a range of settings – at work, in accessing accommodation, in the provision of goods and services, in education settings and in clubs and sporting organisations – when that unfair treatment occurs on the basis of their occupation. Sex workers and other workers associated with sex work are also protected against discrimination on the basis of other attributes listed in the Equal Opportunity Act, including lawful sexual activity and personal association.

Chapter 3 provides an overview of the Equal Opportunity Act and information on the sex work discrimination, sexual harassment and victimisation that sex workers may face in areas of public life.

3.1 Discrimination

As discussed above, the Decriminalisation of Sex Work Act includes amendments to the Equal Opportunity Act to protect sex workers from discrimination. A new protected attribute of ‘profession, trade or occupation’ has been added within s 6 of the Act, meaning that it is now unlawful to discriminate against someone on the basis of their current or former profession, trade or occupation. The amendments have also repealed a section of the Act that enabled accommodation providers to discriminate against sex workers and have added an exception to the new attribute in the context of employment, such that discrimination is permissible where there is a genuine occupational requirement.^{IX}

3.1.1 Direct and indirect sex work discrimination

Sex work discrimination is when someone discriminates against a sex worker or another worker in the sex industry, including treating them unfairly or bullying them, because of their profession, trade or occupation.

IX See Sex Work Discrimination Act, ss 6, 35, 36.

Meaning of 'profession, trade or occupation'

There is no definition in the Equal Opportunity Act for 'profession, trade or occupation'. To understand these terms, we can look to their ordinary meanings. For example, the Cambridge Dictionary defines 'profession', 'trade' and 'occupation' as follows:^X

- **Profession** can be defined as a vocation requiring knowledge of some field of learning or science, especially one of the three vocations of theology, law and medicine.⁴⁸
- **Trade** is defined broadly, with multiple possible meanings. For instance, it can mean: a) the buying and selling, or exchanging, of commodities, either by wholesale or by retail, within a country or between countries; b) a purchase, sale or exchange; or c) a form of occupation pursued as a business or calling, as for a livelihood or profit.⁴⁹ Considering the statutory context with which the provision has been introduced and the purpose of the Sex Work Decriminalisation Act, which is to "decriminalise sex work and provide for the reduction of discrimination against, and harm to, sex workers"^{XI}, all of these definitions of trade could apply. For instance, a sex worker could be discriminated against on the basis of their membership of the sex industry or based on their job or based on the activity of selling sex services.
- **Occupation** is a person's habitual employment, business, trade or calling, and so has a broad meaning.⁵⁰

While the new attribute has been introduced with the intention of preventing discrimination against sex workers and promoting equality, it will also have broader benefits in protecting the rights of other cohorts of workers who face discrimination and stigma as a result of their profession, trade or occupation.⁵¹

The Equal Opportunity Act prohibits both direct and indirect discrimination on the basis of a protected attribute such as 'profession, trade or occupation'.

Direct discrimination

Direct discrimination happens when someone is treated unfairly because of a personal characteristic or attribute protected by the Equal Opportunity Act. Examples of protected attributes are age, disability, race, sexual orientation, engagement in lawful sexual activity and – with the introduction of the new protected attribute – profession, trade or occupation.

The motive and intention of the person discriminating are not relevant to the test of direct discrimination.

Discrimination is against the law when it occurs in an area of public life, including employment, education, accommodation and the provision of goods and services.

Direct sex work discrimination is when someone treats another person unfavourably because of their profession, trade or occupation related to sex work. This may mean that an individual is treated unfairly in relation to the provision of goods and services, employment, accommodation, an educational setting or a sporting club because of their involvement in sex work.

X We note VCAT may rely on these definitions, or other dictionaries such as the Macquarie Dictionary, to obtain the meaning of these words.

XI Sex Work Decriminalisation Act s 1(a).

For example, unfavourable treatment of a sex worker can include:

- refusing to provide or withdrawing financial services to someone on the basis that they are a sex worker or because they work in a sex industry business
- refusing to employ someone after finding out they have worked as a sex worker
- refusing to extend a tenant's lease after the tenant discloses that they are a sex worker
- refusing to provide an educational opportunity to a student after finding out they are currently working or have worked in sex work
- refusing to accept someone's application for club membership on the basis that they suspect the person is or has been a sex worker.

These actions are also unlawful if they are based on someone's personal association with a person who is or was a sex worker (see below for more on the 'personal association' attribute).



Vincent and Mirabella’s story of direct discrimination on the basis of profession, trade or occupation and personal association^{xii}

Vincent is a long-term customer at a large bank with a number of accounts, both personal and business, with the bank. Vincent operates a sex industry business and tells the bank about his occupation. After a number of years with the bank, Vincent receives a letter in the mail telling him that his accounts are being closed for ‘commercial reasons’. Both his personal and business accounts are closed and he is banned from using the bank’s services. He tries to complain to the bank, but is told again that the decision is on the basis of ‘commercial reasons’. Further, the bank places a ban on him, which makes it very difficult for him to find another bank. Vincent is left feeling distressed and this erodes his trust in financial services.

Mirabella, Vincent’s sister, has her accounts closed by the same bank the day before Vincent’s. She is also told by the bank that this decision is based on ‘commercial reasons’.

“When I was verbally told by the bank that all my accounts would be closed, I was in shock and confused. I just didn’t know what was going on. When I questioned why, I was told the bank didn’t know why. This was so confusing and my emotions turned to anger, then fury. The bank staff member handed me a letter in my hand which simply said I was debanked for ‘commercial reasons’. What does this even mean, I asked? I haven’t done anything wrong. The bank staff in the branch looked at me blankly, then they turned against me, asking me to leave the building. I feel they treated me unfairly!”

Mirabella is not a sex worker or in any other sex industry business and believes that the reason her accounts were closed is due to her connection with her brother and his occupation.

This conduct is likely to be discrimination if Vincent can establish that the unfavourable treatment – closing his bank accounts and receiving a ban – is on the basis of his profession, trade or occupation, that is, his work as a sex industry business operator.

For Mirabella, she can argue that her treatment by the bank is direct discrimination on the basis of her personal association with Vincent. However, she would need to establish that the closure of her accounts is due to her association with Vincent as a sex industry business operator.

XII The names and details of this case study have been changed to preserve the privacy of the authors. The authors have approved this case study.

Indirect discrimination

Indirect discrimination occurs when there is an unreasonable requirement, condition or practice that disadvantages a person, or a group of people, who hold a protected attribute.

Indirect sex work discrimination is when an unreasonable requirement, condition or practice disadvantages an individual sex worker or a group of sex workers.

For example, a media company that has a blanket rule which prohibits any material of a sexual nature being advertised on its platform may be liable for indirect discrimination. This is because the rule:

- disadvantages sex workers and sex industry businesses that cannot obtain advertising services and will therefore be unable to promote their businesses
- may not be considered reasonable, depending on the media platform's audience, the time the advertisement might be shown on the platform and in consideration of the Australian Association of National Advertisers (**AANA**) Code of Ethics.

For more information about policies and procedures that might be discriminatory in relation to sex work, see Standard 2 of the minimum standards described in Chapter 4.

'Personal association'

It is also against the law to discriminate against a person because of their relationship with someone who holds a protected attribute. This is called 'personal association discrimination'. For example, a person may be married to a sex worker or a family member of someone who works in a sex industry business and if they experience unfavourable treatment, such as being overlooked for a job or refused a service, on the basis of this personal association, this could be unlawful discrimination.



‘Lawful sexual activity’

Under the Equal Opportunity Act, it is unlawful to discriminate against a person based on ‘lawful sexual activity’, which is defined as ‘engaging in, not engaging in or refusing to engage in a lawful sexual activity’. A person’s sexual activity – so long as it is lawful – should have no bearing on whether the person gets a job, a bank loan or, for example, a place on a sports team. Lawful sexual activity was originally introduced as a protected attribute in 1995 to protect people on the basis of their sexual orientation, before sexual orientation became a protected attribute in its own right.⁵² Over time, this protected attribute has been interpreted as applying to people engaged in licensed sex work activities.

Prior to decriminalisation, Victoria’s discrimination protections (that is, related to the attribute of lawful sexual activity) did not extend to street-based sex work or unlicensed sex work. Only licensed sex work was protected. However, come 1 December 2023 all offences relating to sex work (other than restrictions relating to solicitation during certain times in certain locations; see Annexure) will have been removed. By this stage, therefore, most forms of sex work will be considered lawful sexual activity, meaning sex work will be protected by both the attributes of ‘profession, trade or occupation’ as well as ‘lawful sexual activity’.^{XIII}

Examples of discrimination based on lawful sexual activity (which could also be on the basis of profession, trade or occupation) are:

- refusing to provide a bank loan to someone because they are a sex worker, even though they meet the relevant criteria
- withdrawing a job offer because the successful applicant disclosed that they previously worked as a sex worker
- refusing to enrol a person in a sporting activity because they are engaged in sex work.

3.1.2 Discriminatory requests for information

Under the Equal Opportunity Act, it is also unlawful to request information from a person that could be used to discriminate against that person, for instance, asking someone during a job interview if they were ever a sex worker. If the person replies that they were and then they are not offered the job because of their history as a sex worker despite being the best candidate, this is an example of the requested information being used to discriminate on the basis of their profession, trade or occupation.

An exception applies where the information is requested for a non-discriminatory purpose. For example, where information is requested of a sex worker in the context of pre-employment screening, such as requesting information about whether the person requires reasonable adjustments for a disability that may affect their ability to perform the inherent requirements of the role, it may not be discriminatory if it is required as part of the employer’s OHS obligations. In this situation, the exception to the prohibition on discriminatory requests for information may apply.

XIII With the exception of street-based sex work carried out near schools, children’s services, and education and care services between 6am and 7pm every day, and near places of worship between 6am and 7pm every day, and at any time on designated days such as during religious festivities and on certain holy days, as this is not lawful under s 38B of the *Summary Offences Act 1966*.

3.1.3 Authorising or assisting discrimination

It is against the law for any person, including duty holders, to request, instruct, induce, encourage, authorise or assist someone to discriminate against another person.⁵³ Authorising or assisting another person to discriminate against someone may include a situation where a duty holder is aware discrimination is occurring but chooses not to do anything to stop it or to prevent it from recurring.⁵⁴

Depending on the circumstances, in some cases a duty holder can be found to be authorising or assisting in the discrimination. For example, where an employment agency instructs an employer not to employ anyone with a background in sex work, the agency may be unlawfully authorising or assisting in discrimination.

3.1.4 Legal liability

Liability refers to legal responsibility for unlawful discrimination. Under the Equal Opportunity Act, people can be individually liable for their own conduct and employers and educational authorities (such as schools) can be vicariously liable for the conduct of their staff. Identifying who is liable determines who is ultimately accountable for responding to the discrimination, for example, by paying compensation, issuing an apology or other forms of redress.

Individual liability

If a person (including individuals and unincorporated associations or organisations) discriminates against another person when providing goods or services, accommodation or in sport, they may be individually liable. This means they are held directly responsible for their conduct and may be ordered to personally pay compensation to the person they discriminated against, along with other non-financial remedies.⁵⁵ In the education and employment area of public life, a claim of unlawful discrimination can only be brought against the organisation, not an individual staff member. In education, it is the educational authority that is liable for the conduct of its staff. In employment, it is the employer or principal that is liable for the conduct of its employees or agents. However, employers can avoid liability if they can demonstrate they took reasonable precautions to prevent an employee or agent from contravening the Equal Opportunity Act.

Vicarious liability

If a person discriminates in the course of their employment or while acting as an agent for an organisation, their employer can be held legally responsible for their conduct. This is known as 'vicarious liability'. As noted above, unless an employer can show they have taken reasonable precautions to prevent discrimination from occurring, they will be vicariously liable for the conduct of their employees and agents.⁵⁶ What is reasonable will depend on the size and resourcing of the employer.⁵⁷

3.2 Areas of sex work discrimination

3.2.1 Financial services

During consultations with sex workers, advocates and sex industry businesses, numerous stakeholders raised concerns about discrimination in financial services.⁵⁸

The kinds of discrimination identified included:

- banks refusing to provide services to sex workers, including merchant facilities
- cancellation of existing bank accounts (both personal and professional) and merchant banking facilities – this is also known as ‘debanking’
- financial institutions refusing to provide mortgages and loans despite proof of regular and stable income or good credit ratings
- online payment systems barring access to services
- financial institutions requiring additional payments from sex workers to access services.⁵⁹

The impact of discrimination in financial services is vast and includes financial insecurity, housing insecurity, trauma and social exclusion.⁶⁰

Anti-money laundering and counter-terrorism provisions

Financial institutions may seek to rely on the federal *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* (**AML/CTF Act**) as a defence of unlawful sex work discrimination in the provision of financial services. The AML/CTF Act places obligations on financial institutions to comply with the Anti-Money Laundering and Counter-Terrorism Financing Rules (**the Rules**),⁶¹ which require financial organisations to identify, mitigate and manage the risk of money laundering and financing of terrorism, and regulate many of the services that financial institutions provide, for example, opening an account, allowing a transaction to be conducted in relation to that account, accepting money on deposit and making a loan.⁶²

However, the AML/CTF Act and the Rules are unlikely to authorise banks to have a blanket policy, condition or requirement banning or restricting sex workers or people engaged in sex work services. This is because the Act and Rules apply specifically to anti-money laundering and counter-terrorism activities. Having a blanket policy or requirement applying to those involved in the sex industry would likely go beyond what is required of financial institutions by the AML/CTF Act and the Rules. There are also requirements for any adverse action to be grounded in appropriate and tailored risk assessments. Financial institutions would likely need to present evidence that demonstrates that the sex industry business or sex worker presented an appropriate level of risk and that there was a relationship between the individual business/worker and money laundering or terrorism financing, for a refusal to be authorised.

The AML/CTF Act does provide protection from liability for action taken in compliance with the Act, which some financial institutions may call upon if they take adverse action against a sex worker. However, there is a requirement that this action be done in 'good faith' and any conduct in breach of state anti-discrimination legislation, such as the Equal Opportunity Act, may not be considered to be action done in 'good faith'.^{XIV} In other words, a financial institution such as a bank may not be able to rely on the good faith defence in this Act where its conduct is in breach of the Equal Opportunity Act.



XIV See *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* s 235(1).

Jasmine's story of discrimination in financial services^{xv}

Jasmine, a sex worker, was a customer at a major bank for several years. She had informed the bank of her occupation when she initially went to the branch and opened the account, about which the bank advised her that it “wouldn't be a problem”. However, years later she received a letter in the mail notifying her that the bank intended to cease providing her services because of her profession. There were no further details in the letter regarding this decision, nor an avenue for appeal.

“The letter came out of the blue. I'd never had issues with the bank before, I was a good customer. After I received the letter, I went to the media and then to the [Victorian Equal Opportunity and Human Rights Commission].”

The bank then called Jasmine and told her its position – which was that it had decided to cease providing services to sex industry businesses. She clarified that she worked as a sole trader and the bank claimed that it had misclassified her.

“I asked them why brothels are out of line. They mentioned the [Anti-Money Laundering and Counter-Terrorism Financing Act], saying that brothels were a risk, but they didn't offer any risk information and they said they wouldn't. I think they have a lot of loopholes.”

“This experience was frustrating as the bank had ways to avoid this. The [Victorian Equal Opportunity and Human Rights Commission] doesn't take one side or another. But we were going around in circles, the bank wasn't taking ownership.”

Because Jasmine went to the media, colleagues in her other job in a community centre found out that that she was a sex worker. While her bosses were fine with her other work, some of her colleagues treated her differently.

Jasmine asked the bank to review its policies and for an apology letter in relation to the closing of her accounts. The bank refused both requests, stating it had not done anything wrong and did not owe her anything.

“It makes you feel like you're not part of society. They didn't apologise for any of the effects it had on me.”

Through the conciliation process at the Commission, the bank provided her with a \$700 settlement [figure changed].

“They said they would offer me the money if I didn't talk about the issue.”

This is likely to be an example of direct discrimination and unlawful under the Equal Opportunity Act.

XV The names and details of this case study have been changed to preserve the privacy of the author. The author has approved this case study.

3.2.2 Employment

Employment is a key area of public life where discrimination is likely to occur.^{XVI} Sex workers can and do experience discrimination at work, be that in the context of employment within a sex industry business or in work outside the sex industry.

Are sex workers 'employees'?

Much of the research into the legal relationship between sex industry business owners and sex workers has found that sex workers are either 'employees' or 'independent contractors'.⁶³ Workers differ in how they prefer to characterise the relationship, with some asserting that they are not an employee and others that they are. Sex industry businesses also tend to deny there is an employment relationship.⁶⁴

While it can differ between laws and jurisdictions, 'employee' is defined broadly under the Equal Opportunity Act and includes both an employee under a contract of services and a person engaged under a contract of services such as an independent contractor. As such, sex workers engaged in these ways may be 'employees' for the purposes of the Equal Opportunity Act (even if this is denied by the sex industry business) and therefore protected by anti-discrimination law within the employment area of public life.⁶⁵ However, the exact nature of the relationship between parties will depend on the nature of the employment in any sex industry business.

Discrimination within a sex industry business

In a sex industry business, discrimination can occur in a range of ways. For example, it may be discrimination in relation to employment where:

- a sex worker is subjected to taunts or abuse from management based on their sex worker status
- a sex worker is required by their employer to undertake an STI screening because of their job
- a sex worker loses shifts because of their age or physical characteristics^{XVII}
- a sex worker is deliberately excluded or isolated because of their race
- an HIV-positive sex worker is not permitted to work because of their disability.

XVI Almost half (46 per cent) of complaints received by the Commission in 2020–21 were about unfair treatment in the workplace. humanrights.vic.gov.au/resources/annual-report-2020-21

XVII An employer may limit the offering of employment to people of one sex or discriminate on the basis of physical features in some circumstances: s 26 of the Equal Opportunity Act.

STI screening mandates

As discussed in Chapter 2, the first stage of the reforms to decriminalise sex work included abolition of the offence for sex workers to work with an STI, as well as the requirement for sex workers to demonstrate that they had undergone regular STI testing (ss 19 and 20 of the Sex Work Act). Health research has indicated that STI mandates such as these are unnecessary, ineffective and stigmatising.⁶⁶ More effective alternative approaches to preventing and responding to STIs/blood-borne viruses (BBVs) include providing access to safer sex practices such as condoms, promoting peer education and improving access to voluntary testing and treatment.⁶⁷

Where a sex industry business owner or employer has a requirement that sex worker employees in their business regularly undergo STI screening, this may be considered direct discrimination under the Equal Opportunity Act. If an employee brought forward a complaint of direct discrimination on this basis, in order to be successful they would need to establish that the employer was requiring them to undergo mandatory STI testing because of their occupation. They would also need to establish that mandatory STI screenings amounted to unfavourable treatment.

Sex workers with HIV

Sex workers who are HIV-positive are no longer excluded from taking part in sex work.^{XVIII} Further, there is no requirement for sex workers to disclose their HIV status to clients, colleagues or employers, except in certain circumstances, as discussed in Section 3.3. Preventing transmission is the responsibility of everyone, not just those who know they are HIV-positive.

HIV status falls under the attribute of 'disability' for the purposes of the Equal Opportunity Act.⁶⁸ This means that where a sex industry business learns of a worker's HIV status and prevents them from working on that basis, this may be discrimination under the Equal Opportunity Act on the basis of disability.

Refer to Section 3.3 below on disability discrimination for more information.

For further information on working with HIV, please see the Department of Health website: <https://www.health.vic.gov.au/preventive-health/sex-worker-health>.

XVIII Since 10 May 2022, as per the Sex Work Decriminalisation Act.

Discrimination in other employment contexts

“It’s important not to underestimate the stress and psychological impact of having to figure out how you’re gonna lie on your [rental application or your] job application because you obviously can’t tell people that you’re a sex worker because you know you’ll be discriminated against.”

Participant in phase one consultation⁶⁹

“In terms of finding work outside of the industry, if you have sex work on your resume, it’s still definitely something that gets you, at least perceivably, knocked back.”

Participant in phase one consultation⁷⁰

“I would never disclose to a prospective employer of a ‘straight’ job that I was/am a sex worker because of fear of discrimination.”

Private sex worker, Anti-discrimination & vilification protections for sex workers in Australia⁷¹

Some sex workers experience discrimination in employment outside the sex industry.⁷² The profession, trade or occupation attribute protects both a person’s current and previous profession, trade or occupation. Therefore, discrimination could occur whether a person is a current or former sex worker.⁷³

Examples:

- An employee is denied a benefit, such as a promotion or training, because they are a sex worker.
- A candidate is not hired for a role because they were previously a sex worker.
- An employee is subjected to taunts from colleagues because they were previously a sex worker.

During consultations the Commission learnt that, for some, sex work can be a transient occupation. Sex workers often have other jobs or move on to other careers after a period of sex work. This means that recruitment processes are common places where sex workers experience discrimination. Sex workers do not have to disclose their current or former membership of that profession (unless required by law) and, due to widespread stigma, are often hesitant to disclose their sex work experience.

Choosing not to disclose their sex work employment history can pose challenges in terms of explaining gaps in a former sex worker’s employment history. There is also fear of people finding out, particularly in smaller towns and communities where the sex worker’s occupation may be widely known.

Discrimination in recruitment can have a significant financial impact on both current and previous sex workers. This can be compounded by other experiences of discrimination, for instance, in the provision of financial services, housing and social services.

3.2.3 Advertising

“This is not large commercial brothels; this is individual sex workers being charged several times more than other advertisers. There seems to be no reason for this difference. This practice has gone on too long and from our perspective appears to be newspaper companies taking advantage of sex workers.”

Janelle Fawkes, former CEO, Scarlet Alliance, Australian Sex Workers Association⁷⁴

Before the introduction of the Sex Work Decriminalisation Act, sex work advertising was prohibited in several ways and limitations were placed on both the location and content of ads. These advertising restrictions have now been removed so that sex industry businesses are able to advertise their services and employment opportunities with transparency and clarity. This means that sex work ads are regulated like any other business ads.

Advertising hosts that have policies which exclude or place unfair restrictions on sex work ads could be liable for direct or indirect discrimination if these policies are not deemed reasonable. Discrimination in the provision of advertising services can occur in a number of ways, including:

- refusal to provide an advertising service because the client is a sex worker
- altered cost, size and content of the ad because the client is a sex worker, depending on the circumstances (discussed below).

Sex workers and sex industry businesses are often refused advertising services by newspapers and media outlets or refused access to relevant sections of a newspaper or media outlet and instead are relegated to publishing in more expensive sections of the paper, for example, personal sections rather than trades sections.⁷⁵ Sex workers may also be quoted or charged a higher price than others by media platforms.

Media platforms with unreasonable blanket policies that refuse to provide advertising services to sex workers on equal terms with others are likely to be directly discriminating against sex workers. Although media platforms have discretion in how they provide their services, they cannot discriminate against a person based on an attribute protected under the Equal Opportunity Act – including profession, trade or occupation – unless an exception applies.

Policies that apply to all clients which place limits on advertising but that disadvantage sex workers specifically, such as restrictions on the use of any content that alludes to sex, may, if unreasonable, amount to indirect discrimination.

Media platforms may still restrict sex work advertising in terms of limiting or excluding explicit content, the time or location that the ad is aired or placed, or other considerations, to align with the AANA Code of Ethics or other standards. Although the Code of Ethics is not legislation, it may inform consideration of ‘reasonableness’ under the indirect discrimination test.⁷⁶ Media platforms may also raise Australian consumer law as a defence; see Section 3.6.2 on how these laws can interact.

See Annexure for further information on the changes to the advertising restrictions.

Saskia's story of experiencing discrimination in advertising^{XIX}

Saskia operated as an online sex worker and was looking to hire a digital manager. She wanted to advertise the role through an advertising website. She drafted an ad for the role which did not contain sexual content although it did refer to the industry as 'adult'.

"I submitted the ad and whoever received it declined to publish it, saying they wouldn't provide services based on their terms and conditions. But I looked up their terms and conditions and there was no mention of anything that related to adult content or anything that would indicate the ad breached their terms and conditions."

Saskia then sent the website correspondence requesting an explanation for the ban; however, they did not respond. The website also suspended her account, meaning she was unable to post any other ads.

She contacted the Victorian Equal Opportunity and Human Rights Commission to lodge a complaint of discrimination.

"This wasn't my first rodeo. I was frustrated more than anything that I was experiencing discrimination because of my job – again! But this time I knew what steps to take and it was a very fast process once I contacted the [Victorian Equal Opportunity and Human Rights Commission]. There was a while where the Commission couldn't contact [the advertising company] but once they could, the process was validating."

Saskia received a payment as part of her settlement and the company reinstated her account and published her ad. It also updated its policies regarding sex service advertising in response to the complaint.



XIX Names and details of the story have been changed to protect the author's privacy but are based on a true experience. This case study has been approved by the author.

3.2.4 Accommodation and housing

“Sex workers don’t just fear discrimination, we know we will be discriminated against. You can’t put ‘I work at a brothel’ on a rental application. I’ve been forced over and over again to lie just to have somewhere to live. I need people to know how profoundly taxing at a mental, emotional and physical level that is. I’m on edge whenever my landlord calls in case it’s to kick me out. ”

Quotation provided by Vixen from a Victorian sex worker⁷⁷

Housing and accommodation are key areas where sex work discrimination occurs. Previously the Equal Opportunity Act explicitly permitted this form of discrimination in Victoria under s 62. This was repealed by the Sex Work Decriminalisation Act.

Refer to Section 2.1 and Annexure for further detail on the Sex Work Decriminalisation Act changes.

Repealed accommodation exception

S 62 of the Equal Opportunity Act allowed accommodation providers to refuse accommodation to a sex worker if they intended to use it for work. This exception allowed accommodation providers to evict sex workers or otherwise treat them unfavourably (for example, charging a higher rate for cleaning) if the accommodation provider believed they were using the premises for sex work. This exception enabled systemic discrimination and created further stigma and prejudice towards sex workers in using both residential and commercial accommodation to conduct their work.

Discrimination in accommodation can occur:

- when applying for a residential lease agreement from either a real estate agent or a landlord who refuses an applicant because they are a sex worker
- when applying for public housing and the provider refuses on the basis that the person is a sex worker
- when refused short-term accommodation or holiday rentals on the basis that the guest is a sex worker
- where a rental agreement is in place and the tenant is evicted because they are a sex worker
- while staying in short-term accommodation and the guest is asked to leave because they are a sex worker
- where sex workers are charged more per night than other guests who are not sex workers.

This form of discrimination can exacerbate housing insecurity for sex workers and deter many workers from disclosing their occupations or encourage them to lie about their work.

3.2.5 Health and support services

“I found that many service providers found it difficult to understand or believe that anyone who was educated, strong and autonomous would want to be a sex worker, would feel empowered by that choice and even feel proud of the work they do ... their inability to believe and listen to my story effectively silenced me ... I chose not to access these services, which severely limited my access to services full stop.”

Ally Daniel, former vice president Scarlet Alliance⁷⁸

Consultations confirmed that sex workers often face discrimination when accessing health services, including general health, sexual health and mental health, and when seeking support from family violence services.⁷⁹ Sex workers report experiences of misdiagnosis, inadequate examination or being otherwise inappropriately treated. Sex workers also report having clinical assumptions made about them on the basis of their sex work status rather than their clinical presentation.⁸⁰ Research demonstrates a general distrust and disillusionment with health and community services from the sex worker community. This is compounded by a fear of being cut off from services if they are to make a complaint.⁸¹

Sex workers can also experience high levels of stigma and discrimination when seeking mental health services, which creates a significant barrier for those seeking support.⁸²

Experiences of stigma and discrimination also hinder sex workers from seeking or receiving family violence and sexual assault support services. This not only has the effect of restricting access to critical emergency services but also leads to significant underreporting, limiting the availability of prevalence data in relation to instances of violence against sex workers.⁸³ This is reinforced by harmful views that violence is ‘just part of the job’, a clear example of victim-blaming – another form of unfavourable treatment.⁸⁴

Examples of discrimination in the provision of health and support services include:

- refusal to provide family violence shelter services because the person is a sex worker
- reduced access to services or different services provided to a sex worker seeking health services for a foot/ankle injury and being unnecessarily questioned about STIs
- a person being told service staff are ‘uncomfortable’ with sex work.

Andie's story of discrimination in support services

Andie is a street-based sex worker and works primarily late at night in a street close to a major strip of popular entertainment venues.

Andie experiences an incident of family violence in their private life and seeks information and support from a local crisis service. Although Andie has never spoken to the staff at the family violence service before, the staff recognise Andie as a local street-based sex worker.

Andie notices the reception staff speaking in whispers and glancing their way as staff converse in hushed tones behind a security barrier.

The duty social worker comes out to speak to Andie. Andie tells the social worker that they have been experiencing family violence and want to seek help and support to leave the home they share with their partner. They tell the duty social worker that their partner is abusive and threatening to out them as a sex worker to their extended family, to prevent Andie from leaving them.

Instead of focusing on the problem Andie has identified, the duty social worker redirects their conversation to focus on Andie's sex work and the need for Andie to stop sex work. The duty worker repeats unhelpful stereotypes about sex work that Andie knows are not true and does not let Andie interrupt to correct her.

Andie feels humiliated, ashamed and misunderstood by the social worker and says they need to leave. They exit the service.



3.2.6 Victoria Police

“I got assaulted by a client at work and I decided to report it. The first police officer said I was sending mixed messages by saying yes to sex and money one minute and no the next. The next officer said he believed me but that no jury would believe a ‘working girl’ over a businessman in a suit and encouraged me to withdraw my statement. The one who took me to do a rape-kit told me I should quit sex work if I didn’t want this to happen again, as if it was my fault. I deserved support and instead I got blamed and humiliated and treated like I wasn’t a person. Honestly, reporting to the police was even more traumatic than the assault itself.”

Quote provided by Vixen from a Victorian sex worker⁸⁵

As discussed in Chapter 2, the criminalisation of sex work meant that some sex workers have had difficult experiences with police. Some sex workers have also reported experiencing discrimination, sexual harassment and stigma in their interactions with police. For example, some have reported being blamed for crimes committed against them.⁸⁶ Some reported not being believed or taken seriously when they turned to police for help.⁸⁷ Some sex workers also reported experiencing sexual propositioning, demands for sex, assaults and illegal searches by police.⁸⁸

With the removal of many offences in the first phase of decriminalisation, the role of the police has started to change significantly with respect to sex work. While the police remain responsible for matters of community safety, workers in the sex industry should be able to seek their assistance without experiencing discrimination or stigma.

“When I’ve experienced sexual assault in the past, the cops have done nothing.”

Private sex worker, I wouldn’t call the cops if I was being bashed to death⁸⁹

“It would have to be very, very severe for me to look at seeking assistance [from police] in the future.”

Private sex worker, I wouldn’t call the cops if I was being bashed to death⁹⁰

When is a member of Victoria Police a duty holder under the Equal Opportunity Act?

Generally, Victoria Police are deemed to be providing a service, and subject to obligations under the Equal Opportunity Act, when helping victims, protecting and assisting members of the public, responding to calls for assistance, maintaining good order and preventing crime.⁹¹ In contrast, police in Victoria are generally not providing a service, and therefore not subject to these discrimination protections, when fulfilling their duty to prosecute crime, for example, while pursuing, arresting and deciding to charge an alleged offender, handling bail, summons and warrants or conducting investigations.⁹²

This means that it may amount to discrimination if an individual experiences unfavourable treatment in their interactions with police on the basis of a protected attribute (such as sex worker status under the protected attribute 'profession, trade or occupation') where police are undertaking community service activities.

For example, if a sex worker was to report having experienced a violent crime to a member of the police and the police at first instance refused to take action or commence an investigation because the victim was a sex worker, this might be unlawful discrimination.

To support the decriminalisation of sex work, Victoria Police will continue to educate their members about the barriers sex workers face when reporting crimes to the police, including appropriate ways to engage with the industry.⁹³

3.2.7 Local government

Local government plays a key role in supporting decriminalisation. Local government, through their ability to make local laws, may introduce a system of permits, licenses, fees, charges or registration, and may prescribe penalties for contraventions of local law.

Under the Sex Work Decriminalisation Act 2022, as of 1 December 2023, sex work will be regulated through standard business laws, including local laws. It is a legal requirement that local laws support the decriminalisation of sex work and provide for the reduction of both discrimination and harm against sex workers.^{xx}

Local governments are also duty holders under the Equal Opportunity Act, which means they must take reasonable and proportionate steps to eliminate discrimination, as well as ensure they do not directly or indirectly discriminate against sex workers. Therefore, any local laws (including permit systems) that apply to sex workers must not treat sex workers unfairly due to their profession, trade or occupation, and must not place unreasonable requirements, conditions or practices on sex workers that disadvantage them.

Home-based businesses

By December 2023, sex workers and sex industry businesses will be treated like any other worker or service business under the planning scheme, including being able to operate as home-based businesses. Local governments have responsibility for administering and enforcing the planning scheme, including by overseeing the processes and procedures for people to report breaches of the scheme.

A home-based sex industry business must comply with the home-based business requirements of the planning scheme (see Annexure for further information regarding the planning scheme).

XX S 3 of the Sex Work Decriminalisation Act.

If a planning permit is required, for instance, where the home-based sex industry business does not fully comply with the home-based business requirements, it is local government's role to assess the planning permit application. Sometimes this assessment can involve the use of discretion, which creates the possibility of unlawful discrimination. However, as duty holders, local governments are subject to legal requirements not to either directly or indirectly discriminate against sex workers.

Example of sex work discrimination in local government

Sam is a sex worker lawfully operating out of her home after 1 December 2023 as a home-based business under the local planning scheme. Their neighbour reports them to the council, claiming that the parking generated by the business is causing disruption in the street and bringing 'unsavoury characters' into the neighbourhood. The council responds by introducing resident parking permit zones that effectively remove the parking for Sam's clients. Sam later finds out that in a neighbouring suburb, a similar issue parking issue had arisen alongside a home-based hairdressing business, where the council responded by introducing time-limited parking spaces and resident parking zones outside the business.

Sam may be able to argue that the council's decision amounts to unlawful discrimination due to Sam's sex worker status and therefore the protected attribute of 'profession, trade or occupation'.

Street-based trading

Through this ability to make local laws, local government may seek to regulate street trading and the issuing of any required street trading permits. This means that any local laws regarding permits for selling or touting in public places could apply to street-based sex workers. Again, any law that does so must not be inconsistent with or undermine the purposes of the Sex Work Decriminalisation Act including to provide for the reduction in both discrimination and harm to sex workers.

3.3 Disability discrimination

Disability discrimination is when someone is treated unfairly because of their disability. Examples of disability discrimination in the sex industry could include:

- a sex worker losing shifts because they told their manager they are HIV positive
- a sex industry business refusing to hire someone because they are on the autism spectrum
- a sex worker being bullied by a colleague due to an intellectual disability
- a sex industry business with a blanket uniform policy that unreasonably requires workers to wear particular footwear without any alternatives, and this disadvantages workers with certain disabilities.

Reasonable adjustments

In some circumstances, a sex worker, or another worker in the sex industry with a disability, may request reasonable adjustments to allow them to work safely. These can be changes to the work environment or conditions, for example:

- reviewing and, if necessary, adjusting the performance requirements of the job
- providing flexibility in work hours
- approving more regular breaks for people with chronic pain or fatigue.

Where a worker is requesting reasonable adjustments, they may be asked by their employer to provide details about the need for these reasonable adjustments.

Disclosures

Sex workers and other workers in the sex industry can generally decide who they disclose their disability to. Under the Equal Opportunity Act, a duty holder such as an employer must not request a person to provide information that could be used in a discriminatory way. See Section 3.1.2 for more information in relation to discriminatory requests for information.

However, in certain circumstances a duty holder may be able to ask questions about a person's disability if the information is reasonably required for a purpose that does not involve prohibited discrimination, for example, where:

- the information is needed to ensure the health and safety of everyone at work and everyone is asked to provide similar information
- the question is about changes to the workplace or equipment that the worker might need to help them do the job and to make sure that they are not disadvantaged because of their disability
- the information is directly relevant to the role.⁹⁴

If the employer asks questions about whether a sex worker has a disability, such as an injury, under discrimination law the worker does not need to tell them unless it might prevent them from being able to perform the job. Note that if the sex worker decides not to tell an employer about an existing illness or injury which would affect their ability to do the job, it may limit the worker's ability to seek compensation if the disability returns or is exacerbated.

In addition, if the employer asks the worker to provide information about their disability, the employer has the burden of proving that the information is reasonably required for a purpose that does not involve prohibited discrimination. Where an employer asks for information from a sex worker regarding their disability, the employer should:

- tell them why they are asking for the information
- advise them of any consequences if they do not provide the information; for example, the employer might not be able to provide reasonable adjustments
- allow the worker to access their information.

Alyssa's story of discrimination on the basis of disability – HIV

Alyssa is a sex worker in a medium-sized sex industry business. She works nights regularly from Wednesday to Sunday. Eight months ago, she found out she was HIV-positive. Alyssa did not disclose her HIV status to her employer, as there was no legal requirement for her to do so.

However, one day in the staffroom Alyssa gives some peer health advice to a colleague regarding HIV and in doing so discloses that she is HIV-positive. Alyssa's employer overhears this conversation and after her shift calls Alyssa in to say that, because she is HIV-positive, she is no longer allowed to work on the premises. Alyssa's shifts are cut and she is banned from returning to work.

Alyssa is upset due to the unfairness of the situation, as well as being worried about losing her main income. She asks her manager to reconsider the decision via text, but her manager does not change their mind.

Alyssa can make a complaint of direct discrimination on the basis of her disability, one of the protected attributes under the Equal Opportunity Act, if she can establish that her employer (the sex industry business manager) refused to give her shifts on the basis of her HIV status.



3.4 Spent conviction discrimination

The *Spent Convictions Act 2021 (Vic)* limits when convictions need to be shared with people like employers and service providers. The Spent Convictions Act is designed to remove unfair barriers for Victorians who have committed an offence but have since demonstrated their ability to rehabilitate. If a conviction is 'spent', this means it will no longer appear on a criminal record check and individuals no longer need to disclose these convictions, unless an exemption applies.

The Equal Opportunity Act also protects people from discrimination on the basis of a spent conviction, including being treated unfairly at work and in other areas of public life because of a spent conviction. The inclusion of this protected attribute allows those with spent convictions to move on with their lives and participate fully in society.⁹⁵ This means that, except in very limited circumstances, a person cannot be discriminated against for having a spent conviction.

As sex work is newly decriminalised, there is an overlap between those with criminal convictions and those engaging in sex work. These convictions may become spent immediately, after a certain period of time without reoffending or after applying for a spent conviction order from the Magistrates' Court of Victoria.

Anyone in this situation may wish to seek information from Victoria Legal Aid, a community legal centre or a private law firm for more information on spent convictions (see support and resources in Chapter 5). For more information on spent convictions, you can visit the Department of Justice and Community Safety website and for information on spent conviction discrimination, you can access the Commission's Spent conviction discrimination guideline.⁹⁶



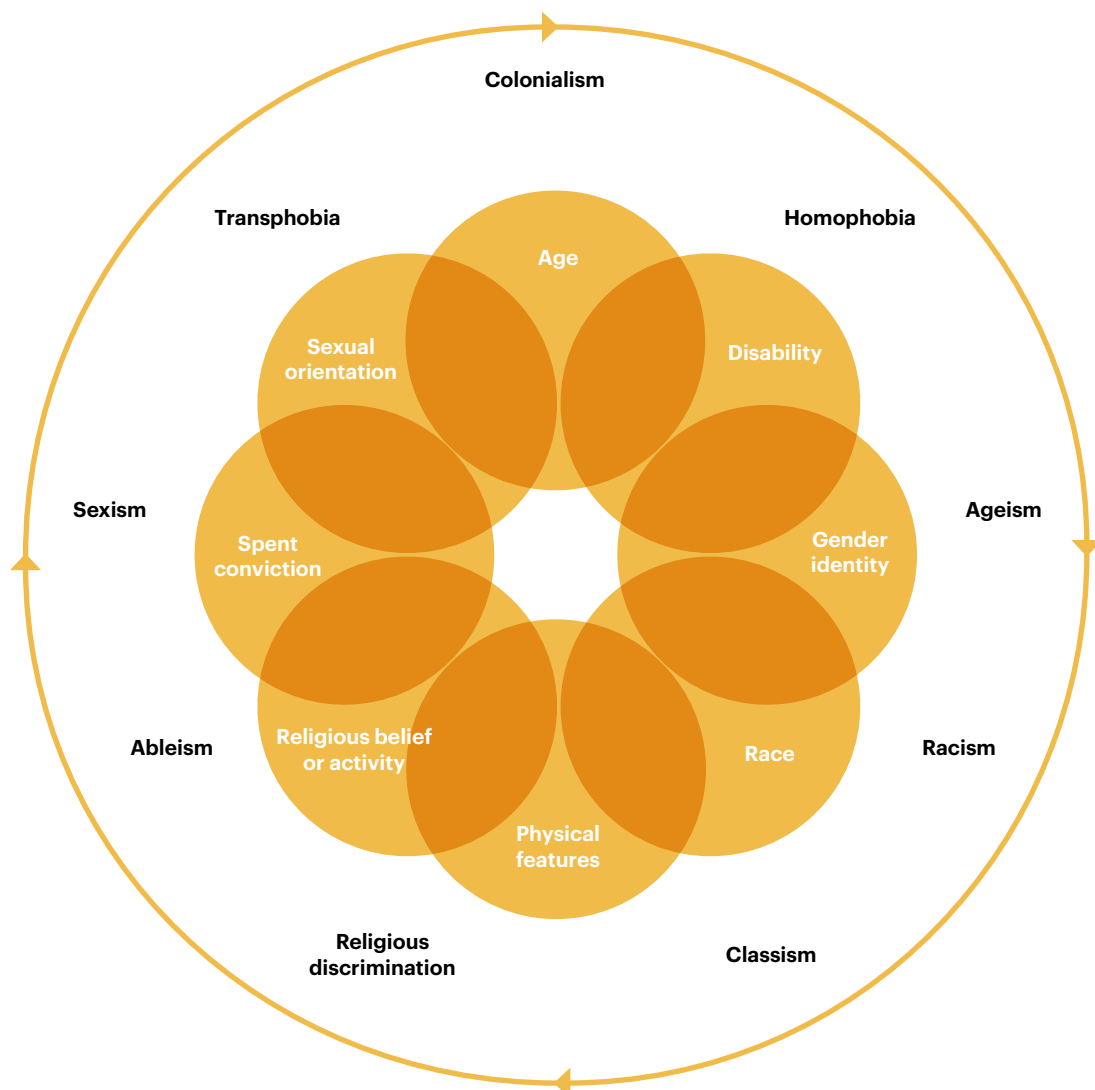


3.5 Intersectional discrimination

Sex workers may experience discrimination on the basis of their profession, trade or occupation; however, there are a range of additional forms of discrimination they can experience which overlap with other personal characteristics protected under the Equal Opportunity Act such as race, gender identify, physical features, sexual orientation or disability. This overlapping, known as **intersectionality** or intersectional discrimination, compounds the impact of discrimination. For instance, sex workers who are transgender may experience intersecting and multiple layers of stigma and discrimination from service providers on the basis of their profession, trade or occupation and on the basis of their gender identity.⁹⁷ Further, advocates for sex workers assert that the intersectional discrimination experienced by some groups of sex workers is a key factor in disincentivising their contact with police. This is particularly the case for sex workers of colour and First Nations sex workers, who experience racism and over-incarceration.⁹⁸

Below is a **diagram** of intersectional discrimination demonstrating how an individual can experience two or more forms of discrimination at the same time.⁹⁹ A person's experience of intersectional discrimination can change at different times in their life and in different social contexts.

Intersectionality Wheel



When making a discrimination complaint (refer to Section 5.5 for more information on the complaint process), sex workers can rely on one or more protected attributes as the basis for their experience of discrimination. The unfavourable treatment must be because of the claimed attribute, or attributes, in order to be considered unlawful discrimination.

3.6 Exceptions

The Equal Opportunity Act outlines certain exceptions to discrimination. If an exception applies, conduct that would otherwise be unlawful discrimination is lawful discrimination.

The exceptions set out below may be relevant to sex work discrimination.

3.6.1 Genuine occupational requirements

The Equal Opportunity Act allows employers to discriminate in offering employment to people of one sex if it is a genuine occupational requirement that the employees be people of that sex¹⁰⁰ and also on the basis of physical features in certain circumstances.¹⁰¹

For example, where a sex industry business is experiencing a high demand for sex workers who are women, the business may be able to rely on this exception to hire only women if it can establish that being a woman is a genuine occupational requirement.

An employer may also discriminate on the basis of the new attribute of profession, trade or occupation in relation to the offering of employment if experience in a particular profession, trade or occupation is relevant to the employment or offer and is a genuine occupational requirement for the position or role on offer.¹⁰²

3.6.2 Statutory authority

The Equal Opportunity Act allows duty holders to discriminate if the discrimination is necessary to comply with or is authorised by another law (the statutory authority exception).¹⁰³ This exception only covers Victorian legislation and is unlikely to extend to Commonwealth Acts.^{XXI}

For example, where a sex worker is intentionally soliciting sex between 6am and 7pm at or near a place of worship, it is likely to be lawful discrimination to prevent them from doing so to comply with the *Summary Offences Act 1966* (Vic) even when other street-based vendors would not be prohibited from operating in this way.

XXI Although s 75 does not apply to Commonwealth Acts, Commonwealth Acts may be raised as a defence to allegations of discriminatory conduct. In these circumstances, s 109 of the Australian Constitution will become relevant and the matter will raise issues of constitutional inconsistency to be dealt with by VCAT. Where a state law interferes with a Commonwealth law, the Commonwealth law will prevail to the extent of the inconsistency: classic.austlii.edu.au/au/legis/cth/consol_act/coaca430/s109.html; further, s 77 of the VCAT Act explains the process for matters raising federal subject matter, which are to be transferred to the Magistrates' Court.

This is because the Summary Offences Act expressly prohibits sex workers from engaging in sex work between the hours of 6am and 7pm every day at or near a place of worship, meaning that action taken in response to this provision would be covered by the statutory authority exception and would not be considered unlawful discrimination.

3.6.3 Domestic and personal services

A person may also lawfully discriminate in relation to employment involving domestic and personal services provided in their own home.¹⁰⁴ This exception applies to an individual who employs someone to work in their own home, as well as to a business providing in-home services on request by the person receiving the service in their home. The exception does not otherwise allow businesses providing in-home services to discriminate.

For example, if a person is looking for someone to provide care services in their home, it is lawful for them to discriminate against someone who is currently working or has previously worked as a sex worker.

3.6.4 Residential accommodation

A person can discriminate when deciding who is going to share residential accommodation with them, or a near relative, when the shared house can accommodate no more than three people in addition to the person discriminating. This exception does not apply to housing providers.¹⁰⁵

For example, if a person is looking for a new housemate to share their home, it is not unlawful discrimination to refuse someone because they are a sex worker.

3.6.5 Insurance

It is not against the law for an insurer to refuse to provide an insurance policy or to make discriminatory decisions about the terms on which an insurance policy is provided and the cost of the insurance in certain circumstances, for example, where it is permitted under a federal anti-discrimination law^{XXII} or where the discrimination is based on actuarial or statistical data which is reasonable for the insurer to rely on and it is reasonable to discriminate having regard to this data or any other relevant factors.¹⁰⁶

XXII *Age Discrimination Act 2004 (Cth), Disability Discrimination Act 1992 (Cth), Racial Discrimination Act 1975 (Cth) and Sex Discrimination Act 1984 (Cth).*

3.7 Special measures

A duty holder may wish to take action to promote the rights of sex workers, such as limiting a job offer to current and former sex workers, because they want to address the stigma, discrimination or disadvantage experienced by sex workers. This is called a 'special measure' under the Equal Opportunity Act.

A special measure recognises the disadvantage that some people have and allows duty holders to offer special assistance to help them enjoy the same opportunities as others.

Special measures must meet certain requirements. A special measure must be:

- directed at members of a group with an attribute for the purpose of promoting or realising substantive equality
- undertaken in good faith to help promote or achieve substantive equality for members of that group
- reasonably likely to achieve this purpose
- a proportionate means of achieving this purpose
- justified because the members of the group have a particular need for advancement or assistance.

A special measure is not discrimination. A person who takes a special measure is not discriminating against another person.¹⁰⁷

For example, a peer-only sex worker organisation runs an education and outreach program for trans sex workers and only hires candidates who are themselves transgender sex workers. The goal of the program is to provide a safe and accessible place for trans sex workers to seek support and information from their peers. A critical part of the model is therefore that the outreach worker is a trans sex worker. This is likely to meet the requirements for a special measure, as the goal is to promote substantive equality by addressing issues that transgender sex workers may face in accessing services and support.

3.8 Sexual harassment

Sexual harassment is unwanted conduct of a sexual nature which could reasonably be expected to make the other person feel offended, humiliated or intimidated. It can be physical, verbal or written (including electronic communication). Sexual harassment can occur within the context of sex work.

Examples of sexual harassment^{XXIII} affecting sex workers are:

- a receptionist in a sex industry business groping a sex worker
- a colleague repeatedly texting another sex worker to tell her she is beautiful and they want to take her out for dinner
- a manager asking intrusive questions of a sexual nature about a worker's personal life that makes them feel uncomfortable
- a bank manager, on finding out a client is a sex worker, asking for sexual favours
- comments on social media that use sexually explicit language to insult a sex worker
- being sexually propositioned by a security guard
- directives from leadership that female front-of-house staff should wear revealing clothing to attract customers.^{XXIV}

In all of these instances, the question of whether this behaviour is considered sexual harassment will depend on whether the conduct is unwelcome and of a sexual nature, and also that a reasonable person would anticipate that the worker would be offended, humiliated or intimidated by the conduct.

For more information on what happens if you experience sexual harassment and steps you can take please see the Commission's guideline on *Preventing and responding to workplace sexual harassment*.¹⁰⁸

XXIII Sexual harassment can also be a form of sexual assault. See Victoria Legal Aid's website for more information: legalaid.vic.gov.au/sexual-harassment.

XXIV This example could also be sex-based discrimination. A worker could argue that the request is discriminatory on the basis of their sex, depending on the detriment suffered.

3.9 Victimisation

The Equal Opportunity Act makes it unlawful to victimise someone because they have raised a complaint under the Equal Opportunity Act.¹⁰⁹ Victimisation means treating or threatening to treat someone, such as a sex worker or sex industry employee, badly because they have:

- made a complaint or allegation of discrimination or sexual harassment, or it is believed they might make a complaint
- helped someone else make a complaint of discrimination or sexual harassment
- refused to do something that might contravene the Equal Opportunity Act.¹¹⁰

Examples of victimisation include, but are not limited to: bullying or intimidating someone who has made a complaint about discrimination or sexual harassment; demoting or threatening to demote someone because they helped a colleague to make a complaint; and refusing a service to someone who has previously made a complaint about discrimination.





CHAPTER 4

Obligations for duty holders

4. Obligations for duty holders

Chapter 4 provides information for duty holders – everyone who has responsibilities under the Equal Opportunity Act such as employers, providers of accommodation, education or goods and services, and clubs and sporting organisations – on fulfilling their obligations under the Equal Opportunity Act, particularly in relation to eliminating sex work discrimination as far as possible in accordance with the positive duty.

4.1 Positive duty

The positive duty requires duty holders to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation as far as possible. This includes sex work discrimination.

The positive duty requires duty holders to take steps to ensure unlawful behaviour is unlikely to occur in the first place.

It helps organisations create a safe and respectful culture free from discrimination, sexual harassment and victimisation, just as OHS laws require employers to take proactive steps to ensure injuries do not occur in their workplaces.

The positive duty applies regardless of the size, nature or resources of your organisation. However, it only requires duty holders to take steps that are ‘reasonable and proportionate’ in the circumstances – which means that the way an organisation chooses to implement the standards will vary depending on factors such as:

- the size of the business or organisation
- the nature and circumstances of the business or operations
- available resources and budgets
- business and operational priorities
- the practicality and the cost of measures.¹¹¹

The positive duty is not just about technical compliance with the law. It encourages best practice for duty holders and systemic change that has a range of significant benefits for rights holders (such as job applicants, rental applicants, clients and students) and duty holders (such as small, medium and large organisations in Victoria). Research has shown that lower rates of discrimination within organisations are associated with increased employee wellbeing, retention and productivity.¹¹²

4.2 Minimum standards for duty holders

The Commission has developed six minimum standards that all organisations should comply with in order to satisfy the positive duty to prevent discrimination, sexual harassment and victimisation. For each minimum standard, the guideline identifies:

- three key expectations to achieve
- a list of actions you can take to implement the standard, depending on the context.

The expectations and actions described below should be read with consideration as to the size, nature and resources of your organisation. A smaller organisation will not have to implement the standards to the same extent as a larger organisation. Similarly, organisations that have limited interaction with the sex industry will not have to implement the standards to the same extent as those in the key areas where sex work discrimination is prevalent. See Section 3.2 on areas of sex work discrimination.

The minimum standards walk you through identification, response and prevention of sex work discrimination.

Standard 1 is about knowledge and understanding in order to be able to **identify** discrimination, victimisation or sexual harassment when you see it in your organisation.

Standards 2, 3 and 4 are about how to **prevent** sex work discrimination from happening in the first place.

Standards 5 and 6 are about how to **respond** to unlawful conduct, including sex work discrimination, when it happens.







Standard 1

Knowledge and understanding of sex work discrimination

Organisations understand their obligations under the Equal Opportunity Act and understand how to identify sex work discrimination.

Expectations

- Organisational leaders and managers know what constitutes discrimination under the Equal Opportunity Act.
- Organisational leaders, managers and staff understand the importance of addressing sex work discrimination, including the ramifications of discrimination for workers and how it affects some groups of people disproportionately.
- Organisational leaders and managers understand their responsibilities related to sex work discrimination, including their positive duty to eliminate this discrimination. They understand how to identify sex work discrimination if it occurs, as well as the drivers and risk factors of sex work discrimination, to actively prevent it from occurring in the first place and what needs to be done in their business or operational context.
- Staff understand their rights and responsibilities in relation to sex work discrimination, as well as how to identify it if it occurs and what steps to take in response.

Actions you can take

- Ensure that the prohibition on sex work discrimination is included in regular interactive training on Victorian discrimination law that is provided live to staff, managers and leadership.
- Staff should undertake formal equal opportunity training every two years which includes training on sex work discrimination. The learnings should be reinforced in team meetings, supervision, internal communications on policies and practices, and performance processes.
- Specialist training should be provided every year to staff in support roles such as contact officers and health and safety representatives to keep them up to date with any changes to the law and with best practice approaches to eliminating discrimination.
- Sign up to subscriptions or e-updates regarding discrimination law in Victoria to ensure your knowledge is up to date in this area.

- Encourage managers and staff to familiarise themselves with this guideline to understand the law on sex work discrimination, the drivers and impacts, and how to prevent discrimination from happening.
- Provide information on discrimination, including sex work discrimination, in staff induction materials.
- Communicate to staff where they can go for further information.
- Put up posters reminding staff of their obligations to identify, respond and prevent sex work discrimination.
- Consider who may be impacted by sex work discrimination in your organisation and whether they may be experiencing other forms of discrimination or compounding discrimination (intersectional discrimination) based on additional attributes.

What should you know about sex work discrimination?

You should have knowledge about:

- what sex work discrimination is and how to identify it within your business or operational context
- what your legal obligations are
- your positive duty to eliminate sex work discrimination
- your obligation to respond to sex work discrimination complaints
- how sex work discrimination may impact your organisation
- what the drivers and impacts of sex work discrimination are
- how to respond to sex work discrimination
- how you can be legally liable for sex work discrimination
- where to go for further information, advice and support.

Standard 2

Systems, policies and procedures

Organisations effectively prevent and respond to sex work discrimination, as well as other forms of discrimination, victimisation and sexual harassment, by reviewing and updating relevant systems, policies and procedures, and developing a plan for responding to any gaps, errors or inconsistencies.

Expectations

- Organisations have policies, procedures and systems that address unlawful sex work discrimination.
- Organisations develop tailored action plans to prevent and respond to discrimination, including sex work discrimination, victimisation and sexual harassment.
- Rights holders such as sex workers and others in the sex work industry are aware of and can access policies and procedures related to sex work discrimination.
- Organisational leaders proactively implement relevant policies related to sex work discrimination.
- Organisations consult with employees and employee representatives regarding gaps and appropriate measures to eliminate sex work discrimination in order to inform the development of an action plan.

Actions you can take

- Identify gaps in existing processes and systems, and develop a plan to address these gaps.
- Review and update **existing systems and databases** to ensure your organisation does not hold or 'flag' information that could lead to discrimination, such as information about the profession, trade or occupation of individuals or any spent conviction, including those associated with sex work.
- Review and update **existing policies and procedures** to provide guidance on how to prevent and respond to sex work discrimination, including policies and procedures relating to: a) equal opportunity; b) recruitment; and c) access to services.
- Consult with staff and their representatives to help identify issues and appropriate measures to eliminate sex work discrimination.
- Review and update existing complaint procedures regarding discrimination on the basis of sex work (or profession, trade or occupation) so as to respond to complaints in a fair, timely, confidential and victim-centred way.
- Make relevant policies and procedures easily accessible and regularly

communicate them to rights holders, such as by placing policies on the organisation intranet.

- Ensure relevant policies and procedures include mechanisms for review and improvement.

How to update your systems, policies and procedures

Step 1: Audit your systems

Conduct an audit of your systems, policies and procedures to determine what needs to be updated in order to prevent and respond to sex work discrimination, thinking about who might be most affected by sex work discrimination within your organisation.

Include your equal opportunity policy, as well as other policies such as recruitment, complaints, customer service etc.

Consider whether there are any new policies or procedures you need to develop to effectively prevent and respond to sex work discrimination.

Step 2: Review and consult

Review any relevant systems and databases to ensure they do not enable discrimination, for example, policies in a financial institution or bank that do not allow employees in a sex industry business to open or retain personal or professional bank accounts. Consult with staff and employee representatives to help identify issues and appropriate measures to eliminate sex work discrimination. Think about steps you can take such as placing restrictions on access to historical records and removing flags for certain professions, trades or occupations.

Historical records in GP clinics

Sex workers have confirmed that some organisations flag the sex work status of clients and customers, particularly in the context of medical care. In GP clinics, this has led to receptionists, nurses and doctors making inappropriate comments or asking inappropriate questions. Sex work status should not be kept on medical records that new doctors, treating professions and administration staff have access to. Privacy principles stipulate that this kind of information should only be accessible for relevant medical care.

Duty holders should review any relevant policies and procedures to ensure they are lawful and up to date, and reflect best practice.

Tips for updating policies/procedures

Area	Tips for updating policies/procedures
Equal opportunity	<p>Ensure your equal opportunity policy and procedures:</p> <ul style="list-style-type: none"> • include and define ‘profession, trade or occupation’ as a protected attribute and highlight in particular sex work as an occupation that experiences discrimination • state that discrimination is unlawful and will not be tolerated • commit to the positive duty to eliminate discrimination • state the consequences of non-compliance such as disciplinary action • include how to make a complaint or refer to your complaint procedure.
Recruitment	<p>Ensure your recruitment policy and procedures:</p> <ul style="list-style-type: none"> • promote equal opportunity for all job applicants • state that candidates will not be discriminated against because of previous or current work as a sex worker • state that it is unlawful to discriminate against a job applicant, including because of their work as a sex worker • do not unintentionally authorise discrimination, for example, by requiring a job applicant to disclose any spent conviction, including those linked to sex work.
Complaints	<p>Ensure your complaint policy and procedures:</p> <ul style="list-style-type: none"> • are person- and victim-centred, impartial and fair • are accessible, flexible and timely • explicitly include sex work discrimination as a basis for making a complaint • make it clear that a complainant will not be victimised for bringing forward a complaint • include a range of pathways for making a complaint • include a range of response options • set out the possible outcomes of a complaint or investigation.
Access to services/ customer service	<p>Ensure your access policy and procedures:</p> <ul style="list-style-type: none"> • promote equal opportunity in accessing your services • clearly state it is unlawful to discriminate in service provision, including because of someone’s occupation, trade or profession or particularly because they are a sex worker or involved in the sex industry • do not unintentionally authorise discrimination • do not include occupation as a criterion for making decisions about who can access your services.

Step 3: Develop an action plan and communicate it

Develop an action plan based on the risk assessment in Standard 3 and an assessment of gaps and issues in your policies, procedures and systems. This action plan should also be informed by consultation with staff, their advocates and rights holders. Communicate any changes to your systems, policies and procedures with staff and other rights holders.

Ensure your updated policies and procedures are easily accessible, such as by emailing them to staff or placing them on noticeboards or the intranet.

Area-specific guidance	
Accommodation	<p>In Victoria, it is against the law to stop a person from renting a property because of a certain attribute such as their profession, trade or occupation, including being a sex worker, as sex work is now regulated like any other industry.</p> <p>The Equal Opportunity Act protects sex workers from discrimination on the basis of their work and accommodation providers cannot refuse to provide accommodation on the basis that they will use the accommodation for, or in connection with, lawful commercial sexual services. This includes accommodation that is a hotel or motel.</p> <p>If you are an accommodation provider or real estate agent, you should review your policies and procedures, and update them so that they do not unintentionally allow sex work discrimination to occur, for example, by removing the onus on the person to provide their occupation, as this may now be deemed a request for discriminatory information.</p> <p>See Section 3.1.2 for further discussion of discriminatory requests for information.</p>
Financial services	<p>As one of the key areas in which sex work discrimination occurs, financial service providers (and other providers of goods and services) need to be aware of their legal obligations and ensure their policies and procedures do not inadvertently discriminate against sex workers.</p> <p>Financial services often require clients and prospective clients to disclose their occupation. This may now be considered a discriminatory request for information under the Equal Opportunity Act, unless it is requested for a non-discriminatory purpose.</p> <p>See Section 3.1.2 for further discussion of discriminatory requests for information.</p> <p>Requiring disclosure of someone's occupation can have an immediate impact on the treatment that the person who is seeking financial services receives – and may mean that the financial institution refuses to provide a service. Refusing services on the basis of someone's profession, trade or occupation without an exception is unlawful.</p>

Employers

Employers should be conscious of how sex work discrimination can occur against job applicants, existing employees and contract workers. It can also happen in a range of different circumstances, such as:

- deciding who should be offered employment (recruitment)
- determining the terms or conditions of someone's employment
- denying an employee access to a benefit such as training or promotion.

It is against the law to discriminate against a job applicant, employee or contract worker because of previous or current experience working as a sex worker.

For example, a person who previously worked as a sex worker applies for a job as a receptionist at a law firm. As the employer, you may not discriminate against the applicant on the basis of their previous work in sex work. However, if the decision not to hire is because the person does not have the necessary skills or experience, this is not discrimination on the basis of the attribute.

Employers should address their current policies and procedures in these areas in order to ensure that they are not discriminating against staff.



Standard 3

Identifying and addressing risks

Organisations regularly identify and manage risks related to sex work discrimination.

Expectations

- Organisations have identified the risk factors that increase the likelihood of sex work discrimination, informed by feedback from staff, their advocates and sex workers where possible.
- Organisations understand the likelihood and potential harm of sex work discrimination, including for people who are more at risk of sex work discrimination or experiencing intersectional discrimination.
- Organisations take steps to minimise and control risks, including keeping effective compliance records.

Actions you can take

- Identify risk factors for sex work discrimination, such as any disclosures where clients/employees/students are required to discuss their work or previous work, in rental applications, loan applications, etc.
- Undertake a risk assessment (see below for questions to consider) to identify the likelihood of sex work discrimination occurring in your organisation and any potential harm to employees or rights holders such as students or clients, recognising that some people are more vulnerable to sex work discrimination than others.
- Take steps to eliminate and control risk factors for sex work discrimination, by embedding this in an action plan – see Standard 2.
- Incorporate sex work discrimination in your existing risk management frameworks and tools such as a risk register.
- Keep records of compliance with the positive duty, such as:
 - training attendance records
 - staff emails and meeting notes or papers
 - updated policies and procedures
 - a formal learning and development plan to develop staff capability
 - position descriptions for senior staff including the requirement to prevent and respond to discrimination
 - updates to staff, other rights holders and stakeholders
 - updated risk frameworks and tools
 - a complaints register, including complaint outcomes
 - records of monitoring and evaluation activities.

What are risk factors for sex work discrimination?

One of the most crucial steps in satisfying the positive duty is to respond to risk factors for sex work discrimination within your organisation, which requires understanding how to assess risk and how to effectively mitigate it.

A risk factor for sex work discrimination is something that increases the likelihood of sex work discrimination happening in your organisation, such as:

- a lack of organisational knowledge about your legal obligations, including the positive duty
- a lack of staff awareness about what discrimination against sex workers looks like or that it is unlawful
- out-of-date policies, procedures and practices that authorise unlawful discrimination, for example, by enabling real estate agents to discriminate against sex workers in the provision of rental accommodation
- a workplace culture where low levels of inappropriate behaviours are ignored and lead to an enabling environment for potentially unlawful discrimination, sexual harassment and victimisation.

It is also important to consider the way that some rights holders or sex workers are likely to be disproportionately impacted by sex work discrimination as a result of systemic inequality and disadvantage, for example, First Nations sex workers, culturally and/or linguistically diverse sex workers, trans and gender non-binary workers, workers with disability, workers from low socioeconomic backgrounds and street-based sex workers.

The following questions help identify the risk factors for your organisation. This is not an exhaustive list, but can be used to prompt a discussion about discrimination prevention and risk mitigation. Depending on the nature and size of your organisation, you may also seek feedback from staff and rights holders in order to understand the unique risk factors for your organisation, such as through an anonymous survey.

Questions to consider that could form the basis of a risk assessment:

- Do your leaders, managers and staff understand their obligations under the law and the positive duty to prevent sex work discrimination?
- Do your leaders, managers and staff understand that sex work is now regulated like any other work?
- Has your organisation identified how sex work discrimination may arise in your organisation, for instance, during recruitment?
- Have you identified who could be impacted by sex work discrimination, for example, prospective or current employees, tenants or clients?
- Have you considered who may be disproportionately impacted, such as First Nations people, people with disability or people from low socioeconomic backgrounds?
- Are your policies and procedures up to date and lawful (for example, do they refer to the current law on sex work discrimination)?
- Do your policies and procedures unintentionally authorise discrimination, such as erroneously deeming sex work to be an industry associated with money laundering?
- Are your policies and procedures easily accessible to your staff and are staff trained in the policies and procedures?
- Do your leaders and managers set expectations with your staff about preventing sex work discrimination, for example, in team and staff meetings?

How to assess and manage risk

You should assess the likelihood of sex work discrimination occurring within your organisation, then assess any potential harm if sex work discrimination happens, which will then help you identify risks that should be addressed as a priority. Finally, you can then take steps to eliminate or control risk factors and prevent sex work discrimination.

For larger organisations, your identification, assessment and management of risk related to sex work discrimination should be incorporated into your existing risk management frameworks and tools such as a risk matrix or register. You should also keep records of actions taken to eliminate or control risk, such as training attendance records, staff emails, meeting papers and updated policies and procedures.

For smaller organisations, you can identify any risks within your policy and procedure documents and update them, send an email to staff with information regarding sex work discrimination, and ensure staff follow the updated policies and procedures.

Standard 4

Leadership and culture

Organisational leaders and managers champion equality and build the organisational culture to prevent and respond to sex work discrimination.

Expectations

- Leaders and managers set clear expectations about preventing and responding to sex work discrimination.
- Leaders and managers are held accountable for identifying and responding to sex work discrimination.
- Leaders and managers encourage and support bystanders to speak up if they witness or hear about sex work discrimination, and have measures in place to keep those who speak up safe.
- All staff promote a workplace culture that prevents discrimination and speak up when they experience or witness discrimination.

Actions you can take

- Require leaders and managers to set expectations through performance review processes or codes of conduct.
- Appoint and train equal opportunity or health and safety representatives to assist staff and leaders in promoting safe workplace cultures and preventing discrimination.
- Have both leaders and staff complete annual training to build safe organisational culture and know how to report discrimination they see or experience.
- Ensure leaders and managers communicate equal opportunity and anti-discrimination policies to staff/clients/customers, for example, through staff meetings or the website.
- Make leaders and managers accountable for identifying and responding to sex work discrimination, for example, by incorporating requirements to prevent and respond to discrimination in senior position descriptions and KPIs.
- Encourage and support bystanders to speak up, for example, by encouraging staff to report discrimination if they witness or hear about it and ensuring that victimisation is not tolerated.

What is best practice organisational leadership?

Organisational leaders can champion equality and build organisational capability to prevent and respond to sex work discrimination by setting clear expectations, being accountable, and encouraging and supporting bystanders to speak up.

Setting expectations

Leaders and managers play a critical role in setting clear expectations about preventing and responding to sex work discrimination.

Leaders and managers can set clear expectations by:

- communicating that sex work discrimination is against the law and will not be tolerated, for example, in emails, team meetings or one-on-one performance or disciplinary discussions
- encouraging staff to read this guideline and get to know the law, for example, by providing equal opportunity training or encouraging staff to attend equal opportunity training
- reminding staff about relevant policies and procedures, and ensuring they understand their obligations relating to these
- modelling appropriate behaviour by proactively taking steps to prevent and respond to sex work discrimination, for example, acting quickly in response to a staff member failing to provide a service because someone is a sex worker.

Accountability

Holding leaders and managers to account can help organisations to take action to prevent and respond to sex work discrimination.

For example, you can promote accountability by:

- including the requirement to prevent and respond to discrimination (including sex work discrimination) in senior position descriptions, performance plans and KPIs, and codes of conduct
- linking best practice prevention and response to performance incentives (such as bonuses) and promotion processes.

Supporting bystanders

Leaders and managers can encourage and support bystanders to speak up if they hear about or witness sex work discrimination, for example, encouraging staff to report sex work discrimination to their manager by assuring them that they will not be treated badly (victimised) for making a report.

Any steps to encourage bystanders to speak up must be supported by a safe and supportive reporting procedure for bystanders to raise concerns or make a report (Standard 2), including providing support options for bystanders such as an employee assistance program.

Standard 5

Reporting and response

Organisations respond to reports and complaints about sex work discrimination in a way that is fair, timely, confidential and victim-centred.

Expectations

- Responses to reports and complaints about sex work discrimination are fair, timely, victim-centred and kept confidential.
- Complainants of sex work discrimination are safe and supported throughout the complaint process, including by identifying and avoiding victimisation.
- Complainants are allowed to make reports anonymously.
- Rights holders such as staff, students, clients and patients know how and where to report sex work discrimination or make a formal complaint.

Actions you can take

- Provide guidance to staff who are responsible for managing complaints about how to respond to complaints in a way that is fair, timely, confidential and victim-centred, for example, by building this requirement into relevant position descriptions or providing training.
- Identify and provide appropriate support options for complainants to ensure they are safe and supported throughout the complaint process, including by addressing victimisation, for example, by providing training for managers to equip them to respond to discrimination complaints in a victim-centred way.
- Share information on how and where to make a complaint, for example, by sending a staff email or providing information on your website.

Reports versus complaints

A complaint is a formal request made using an organisation's complaint procedure or to an external body which requires follow-up action.

By contrast, a report raises a concern about sex work discrimination informally, without it being a formal complaint and not necessarily needing follow-up action. For example, a customer raises concern about an employee's treatment of a sex worker.

Seven key principles for handling complaints and reports

Responding to complaints and reports regarding sex work discrimination must be fair, timely, confidential and victim-centred. Most organisations already have their own complaint-handling procedures; however, this needs to be reviewed to consider whether it is: a) victim-centred; b) fair; c) accessible; d) flexible; e) timely; f) transparent and accountable; and g) whether it embeds continuous improvement.

Victim-centred	Victim-centred is where the interests, wishes, safety and wellbeing of complainants are protected and prioritised. In order to be victim-centred, the complaint process should be designed to minimise harm to complainants, for example, having steps in place to limit how many times the complainant must tell their story. It is also vital that this process is supportive and puts the victim at the centre, promotes choice and control, and maintains confidentiality and anonymity where possible.
Impartial and fair	Impartial and fair processes involve everyone being treated objectively, respectfully and fairly, and listened to equally. The processes for resolving complaints, actions and outcomes are, and are seen to be, consistent and proportionate, and hold respondents to account appropriately.
Accessible	<p>Accessible processes provide a range of clear internal and external pathways that complainants trust, understand and can easily access.</p> <p>This involves providing referral pathways for complainants from diverse backgrounds (including First Nations sex workers, culturally and/or linguistically diverse sex workers, trans and gender non-binary sex workers and sex workers with a disability), ensuring that the referral pathways are culturally safe and bridge any language barriers.</p> <p>Processes and outcomes must also be clear, easily understood and well communicated.</p>
Flexible	Flexible processes provide a range of complaint, reporting and response options, including informal and formal options, as well as options to report anonymously, and are tailored to meet the needs of everyone involved in a report or complaint process.
Timely	<p>Processes should be timely in that responses to reports and complaints are dealt with in an appropriate timeframe and aimed at speedy resolution.</p> <p>Everyone involved in a report or complaint should be updated regularly.</p>
Transparent and accountable	<p>In order to promote transparency and accountability, both sides should be given information openly regarding what the process means for them and what to expect.</p> <p>The reasons for actions and decisions should be communicated to everyone involved, where safe and appropriate, and subject to appropriate oversight.</p>
Continuous improvement	<p>Where appropriate, methods for improving systems and processes should be considered by management after a complaint is investigated and resolved to support prevention efforts.</p> <p>Leadership should be provided with updates on outcomes from complaints and measures to improve systems so that there is accountability within the organisation and reflection on issues that arise so as to make continuous improvements.</p>

Example of reporting and response in educational settings

Minh attends a course at university and approaches their lecturer to let her know that other students have found out they are a part-time sex worker. Minh tells the lecturer that students have been making sexual comments within Minh's earshot and talking in groups about their sex work status. Minh tells the lecturer that it's starting to affect their mental health.

Minh's lecturer expresses her concern to Minh about what has been happening in class and explains the university's equal opportunity policy. The lecturer lets Minh know they can seek support from the equity and diversity office and the student counselling service, and also talks to Minh about her own obligation as an educator and employee under the university's prevention and response framework. With Minh's consent, the lecturer decides to address the problem head on at the next class, where she reminds students of the equal opportunity policy and the consequences of breaches. The lecturer also (again, with Minh's consent) individually counsels the students involved in the inappropriate behaviour on the university's policies.

Minh consents to their lecturer reporting the experience through the university management system and this highlights the need to remind faculty staff across the university of sex work discrimination protection. The university develops a communications strategy and sends out an email reminder to staff about changes to the law and how staff are expected to manage and respond to this type of student behaviour in classes.

How can you take a victim-centred approach?

A victim-centred approach means that you prioritise the complainant's interests, wishes, safety and wellbeing to the greatest extent possible. It engages the complainant in the process and minimises any re-traumatisation by being compassionate, sensitive and non-judgemental.

Taking a victim-centred approach does not mean that your response will be unfair or biased towards the victim – it simply means that the complainant will feel safe and supported, while you respond to the complaint in a fair and impartial way that respects all of the parties involved. For complainants who are or were previously sex workers, they may be particularly cautious about coming forward due to concerns around privacy.

Actions you can take to ensure your complaint process is victim-centred

- listening to the complainant with empathy, respect and concern
- not judging or blaming them
- clarifying the privacy and confidentiality of the complainant in the process, as well as any limits, as soon as possible
- maintaining strict privacy and confidentiality as far as possible, while meeting obligations to provide a safe workplace
- providing choice and control, such as a flexible range of options, to raise and resolve complaints
- letting complainants know they can have a support person throughout the process

- asking complainants how they want to resolve the complaint and what outcome they want
- providing enough information to support them to make decisions
- being responsive and communicating regularly
- offering to provide referrals to support services
- letting them know they will not be treated badly (unlawfully victimised) for making a complaint.
- providing reasonable adjustments in the complaint process where required.

Taking a victim-centred approach

A victim-centred approach can be taken where, for example, an employee discloses that they have been ridiculed by other workers for their previous role as a sex worker and the employer:

- puts things in place to make the employee feel safe at work around other workers
- ensures that the employee is free to speak about their experience to the organisation in a way that is comfortable to them, and
- ensures that they can seek advice and help from appropriate people in negotiating their health and safety during a complaint process.

Further, a victim-centred approach would mean the manager listens to their employee, takes their wishes into account when determining the process and provides ongoing support and assistance in a safe and sensitive manner that is free from stigma and judgement.



Standard 6

Reviewing and adapting

Organisations regularly review and evaluate policies and practices to learn, adapt and improve response to and prevention of sex work discrimination.

Expectations

- Duty holders collect and analyse any complaints and other relevant data for trends, patterns and lessons on sex work discrimination so as to drive continuous improvement.
- Organisational leadership takes proactive steps to address issues identified through monitoring and evaluation.
- Human resources and organisational leaders share de-identified trends and lessons on sex work discrimination with staff and other rights holders, as well as stakeholders.
- Organisations regularly review and update prevention plans, policies and systems in consultation with employees, employee representatives and rights holders.

Actions you can take

- Regularly monitor complaints and other relevant data to identify trends, patterns and lessons on sex work discrimination in order to improve compliance, for example, discussing trends and lessons at board or management meetings.
- Seek feedback from rights holders and advocacy groups where possible, such as surveying clients of your services or engaging with a community reference group, if relevant.
- Incorporate strategies to prevent sex work discrimination into your existing monitoring and evaluation frameworks.
- Require leaders to proactively address issues identified through monitoring and evaluation, for example, by updating policies and procedures to strengthen your organisation's response to sex work discrimination.
- Be open and transparent with staff, other rights holders and stakeholders about trends and lessons related to sex work discrimination, such as sharing de-identified data at a staff meeting or on your organisation's intranet or website to demonstrate your progress in preventing sex work discrimination.
- For larger organisations, include monitoring and adapting as part of the normal business planning cycle.

The power of collecting and analysing data

Organisations are adept at collecting and analysing data, whether this is internal data or commercial/client data. Technologies that capture and analyse data have spread and so has our ability to gain useful insights. Data can be used by organisations to promote equal opportunity in the following ways:

- Reporting and complaint data can be used to track and analyse sex work discrimination and identify trends.
- Feedback from staff and clients can be used to determine how well the organisation is doing to prevent and respond to sex work discrimination and what could be improved.
- Confidential reports of performance and disciplinary processes can be analysed for consistency; for example, if staff have been disciplined for unlawful sex work discrimination, the outcomes can be tracked to enable organisational reflection on its response processes.
- Reports on prevention and response data in your monitoring and evaluation frameworks can be analysed for trends and areas of risk.

Remember that a lack of formal complaints does *not* mean that discrimination is not an issue within your organisation. Rather, it may mean that people do not have the confidence to make a complaint. It may also point to the fact that people do not know how to make a complaint or are worried about the consequences of making a complaint.

Tracking trends

Any de-identified trends, patterns or lessons that you identify should be:

- reported to organisational leaders and managers in order to promote accountability, and
- shared with staff, other rights holders and stakeholders to promote transparency.

This includes reporting and sharing any issues raised through monitoring and evaluation, as well as recognising and celebrating achievements that promote equality in your organisation. You may also want to share information about de-identified complaints of sex work discrimination and complaint outcomes, if it is safe to do so and maintains confidentiality.

If a trend emerges, organisational leaders can proactively address issues in that area. For instance, if you receive multiple complaints about sex work discrimination in recruitment, leaders should prioritise reviewing your recruitment policies, procedures and practices to ensure they are up to date and lawful, and do not authorise discrimination.

4.3 Additional guidance for duty holders

Duty holders can contact the Commission for information on the new protected attribute of profession, trade or occupation, their positive duty obligations and compliance with the Equal Opportunity Act.

For specialist information on further topics, duty holders can engage with the organisations listed below.

Department of Health

The Department of Health offers guidance on public health responses to the decriminalisation of sex work, specifically the health-related reforms in stage one, including changes to testing requirements. The department also provides guidance on Public Health and Wellbeing Act provisions for business owners and employers.

health.vic.gov.au

WorkSafe

WorkSafe educates, supports and guides Victorian workplaces to provide a safe environment for their workers. It provides guidance on employers' and workers' rights and duties under the *Occupational Health and Safety Act 2004 (Vic)* (**OHS Act**) and the *Workplace Injury Rehabilitation and Compensation Act 2013*. It will also be producing sex work-specific information in December 2023.

worksafe.vic.gov.au

AUSTRAC

The Australian Transaction Reports and Analysis Centre (**AUSTRAC**) is responsible for preventing, detecting and responding to criminal abuse of the financial system in order to protect the community from serious crime and organised crime. It is currently developing guidance on provision of financial services to customers that financial institutions assess to be higher risk and on the concept of debanking.

austrac.gov.au

Consumer Affairs Victoria

Consumer Affairs Victoria provides information on the sex industry, including specific information for sex work service providers. It also provides information about unlawful discrimination in renting.

consumer.vic.gov.au





CHAPTER 5

Support and assistance for rights holders

5. Support and assistance for rights holders

Chapter 5 provides support and assistance for rights holders including advocacy services, legal services and support and wellbeing services. It also provides information on occupational health and safety and workplace injury compensation and making discrimination complaints.

5.1 Advocacy services

Vixen

Vixen is Victoria's peer-led sex worker organisation and advocates for the rights of all sex workers. Vixen is run by and for sex workers, and provides a range of services, resources and programs including peer support, advocacy, information referrals, outreach, sex worker-only spaces for current and former sex workers of all genders, and sex worker awareness training for organisations and services.

- Website: vixen.org.au
- Email: info@vixen.org.au
- Phone: (03) 9070 9050

Scarlet Alliance

Scarlet Alliance, the Australian Sex Workers Association, is the peak national body advocating for sex worker rights and health for current and former workers in the sex industry. Scarlet Alliance also provides training and education on issues relating to Australian and migrant sex workers.

- Website: scarletalliance.org.au
- Email: info@scarletalliance.org.au
- Phone: (02) 9517 2577

RhED (Resourcing health & EDucation)

RhED is a Victoria-based organisation that provides services, programs and resources to Victorian sex workers. RhED provides information and resources to the broader sex industry and offers sex industry-related education to the wider community.

- Website: sexworker.org.au
- Email: sexworker@sexworker.org.au
- Phone: 1800 458 752

Sex Work Law Reform Victoria

Sex Work Law Reform Victoria is a sex worker-led, not-for-profit and non-partisan volunteer organisation that advocates for sex worker rights and promotes respect and protection for past and present workers in the sex industry.

- Website: sexworklawreformvictoria.org.au
- Email: contact@swlrv.org.au
- Phone: 0420 644 330

5.2 Legal services

Federation of Community Legal Centres (Vic) Inc.

The Federation leads and supports excellence in the community legal sector. There are Community Legal Centres across Victoria which provide free legal advice to people experiencing disadvantage.

- Website: www.fclc.org.au
- Email: administration@fclc.org.au
- Phone: (03) 9652 1501

Southside Justice

Southside Justice provides free legal service for individuals on low incomes in the cities of Port Phillip, Stonnington and Bayside. Its Sex Worker Legal Program provides legal assistance to Victorian sex workers and the organisations that support them.

- Website: southsidejustice.org.au
- Email: info@southsidejustice.org.au
- Phone: (03) 7037 3200

Victoria Legal Aid

Victoria Legal Aid is a legal service that offers legal information and support, with a focus on early prevention and resolution of legal issues. It can provide free legal advice over the phone for sex work discrimination issues and legal assistance to those on low incomes.

- Website: www.legalaid.vic.gov.au
- Legal Help Phonenumber: 1300 792 387

5.3 Support and wellbeing services

Vixen

Vixen is Victoria's peer-led sex worker organisation and advocates for the rights of all sex workers. Vixen is run by and for sex workers, and provides a range of services, resources and programs including peer support, advocacy, information referrals, outreach, sex worker-only spaces for current and former sex workers of all genders, and sex worker awareness training for organisations and services.

- Website: vixen.org.au
- Email: info@vixen.org.au
- Phone: (03) 9070 9050

Red Files

Red Files is an organisation focused on the prevention of violence and exploitation of sex workers. With membership access, it provides a space to connect, information and resources on OHS and wellbeing for past and present sex workers based in Australia.

- Website: redfiles.org.au

St Kilda Gatehouse

St Kilda Gatehouse is a not-for-profit organisation that provides support and safety for women street-based sex workers in St Kilda. Its drop-in centre provides crisis care, food, clothing and access to housing, legal and health services.

- Website: stkildagatehouse.org.au
- Email: info@stkildagatehouse.org.au
- Phone: (03) 9534 2916

5.4 Occupational health and safety and workplace injury compensation

WorkSafe

WorkSafe is Victoria's workplace health and safety regulator and workplace injury insurer, and administers the Occupation Health and Safety Act and *Workplace Injury Rehabilitation and Compensation Act 2013*, among other legislation. WorkSafe can hold negligent employers to account and enforces OHS laws if workers are subjected to risk or harm.

From December 2023:

- WorkSafe will regulate both the OHS of, and workers compensation for, all Victorian sex work operations, not just licensed sex work operations, and
- Sex work employers and employees will have the same general OHS rights, duties and protections that apply in all other workplaces in Victoria.

Further information and guidance for the sex industry are available on WorkSafe's website [worksafe.vic.gov.au](https://www.worksafe.vic.gov.au).

5.5 Discrimination complaints

If you think you have experienced discrimination in any form (as well as victimisation and/or sexual harassment), including from Victoria Police, you may wish to contact the Victorian Equal Opportunity and Human Rights Commission for further information or to lodge a complaint. Call the Commission's free Enquiry Line on 1300 292 153 if you require more information, or lodge a complaint on our website.¹¹³

Discrimination complaints can also be brought forward by representatives or by a sex worker using their professional name, but the complainant's identity cannot remain wholly anonymous to the respondent.

As the Commission is only able to accept complaints against the police in specific circumstances, for example, when a police officer is providing goods and services such as being asked for help or assistance, sex workers can also lodge a complaint with the Police Conduct Unit at Victoria Police on 1300 363 101 or the Independent Broad-based Anti-corruption Commission (**IBAC**) on 1300 735 135 or online at www.ibac.vic.gov.au/general/contact-us.

Who can bring complaints of discrimination?

Individuals

If a person thinks they may have experienced sex work discrimination, they can bring a complaint to the Victorian Equal Opportunity and Human Rights Commission or VCAT. The person could be a sex worker, a sex industry business worker such as a receptionist or cleaner or a sex industry business manager such as an escort agency manager.

Examples:

- A sex worker may have experienced discrimination on the basis of their profession, trade or occupation in applying for rental accommodation and including their occupation on the application form.
- A receptionist at a sex industry business may have experienced discrimination in being refused for a loan on the basis of their profession, trade or occupation.
- A sex industry business owner may have experienced discrimination in applying for a job in another industry but being unsuccessful because of their previous profession, trade or occupation.

Businesses

Sex industry businesses, commonly known as brothels and escort agencies, can experience unfavourable treatment because they provide sex services. This is a well-documented experience in Victorian research and was frequently raised in consultations with the Commission.¹¹⁴ For instance, where a financial institution 'debanks' or discriminates against a brothel business or escort agency by refusing to provide a service, this unfavourable action is taken against the business and the business itself is harmed.

Incorporated businesses have previously not been able to bring claims of discrimination under the Equal Opportunity Act because they have not been deemed by a court or tribunal to be able to possess a protected attributes under the Act.¹¹⁵ However, it may be open to a court or tribunal to find that incorporated businesses, such as sex industry businesses, are able to bring a discrimination complaint on the basis that they possess a profession, trade or occupation.

An incorporated sex industry business could also bring a complaint as a **representative body** on behalf of a person or persons experiencing unlawful sex work discrimination if it can establish it has a sufficient interest in the dispute.¹¹⁶

Victorian Equal Opportunity and Human Rights Commission dispute resolution services

If you have experienced sex worker discrimination, you can make a complaint to the Victorian Equal Opportunity and Human Rights Commission. The Commission's free, safe and voluntary dispute-resolution service is available to resolve complaints of discrimination, sexual harassment, racial and religious vilification and/or victimisation.

The dispute-resolution service aims to help Victorians resolve their disputes as quickly as possible through a process called conciliation. Our conciliators assist participants (or parties) to explore options to resolve the dispute or issue.

You can contact the Commission's free Enquiry Line, send an email to enquiries@veohrc.vic.gov.au or visit our website at humanrights.vic.gov.au/get-help

Victorian Civil and Administrative Tribunal (VCAT)

Victorians who have experienced unlawful discrimination, sexual harassment, victimisation or vilification can apply to VCAT under the Equal Opportunity Act. Through VCAT, applicants can either go through mediation or compulsory conference to reach an agreement on a dispute or present their position at a hearing where VCAT will make a decision which must be followed by each party.

A sex worker who has concerns about the use of their birth or registered name in VCAT proceedings can apply to VCAT for a suppression order to keep this name from being recorded as a matter of public record.

Complying with Victorian discrimination law as a national organisation

If an organisation is based outside of Victoria, the positive duty could still apply if the organisation has a sufficient connection to Victorian rights holders. Therefore, rights holders could still bring forward a discrimination complaint.

For example, where a Victorian rights holder engaged services from a Victorian branch of a national organisation, the national organisation could be subject to Victorian anti-discrimination laws even if the broader organisation administration was based elsewhere.

No matter the jurisdiction, this guideline provides a best practice approach that can be instructive to national organisations outside Victoria in how to prevent and respond to sex work discrimination.





Annexure

Legislative amendments from the Sex Work Decriminalisation Act

Planning scheme changes

The planning scheme changes for sex work and sex services premises come into effect on 1 December 2023 and will amend the Victoria Planning Provisions and all planning schemes to implement the decriminalisation of sex work. These changes will require a sex services premises to be regulated under the same conditions and requirements that apply to a shop in all planning zones.^{XXV}

The key changes to the planning scheme for sex work include:¹⁷

- allowing sex work to be carried out as a home-based business
- aligning planning controls for a sex services premises with those that apply to a shop in commercial and mixed-use areas
- removing the term 'brothel' and replacing it with the land-use term 'sex services premises' where required.

As of December 2023, sex workers will be able to operate a home-based business if they meet the home-based business requirements in the planning scheme, meaning sex workers can soon, as a right, work from where they live, including in public housing. The home-based business requirements apply to all home-based businesses and are administered and enforced by local government.

Note: The ability for sex workers to work from home is a significant shift from the previous framework where discrimination was expressly permitted under the Equal Opportunity Act when providing accommodation to sex workers who intended to work from the premises.^{XXVI} This section of the Equal Opportunity Act has been repealed.

Amenity

One of the requirements under the planning scheme for all home-based businesses is that they must not adversely affect the amenity of the area. If neighbours or other affected parties believe a home-based business is adversely affecting the amenity of the area, they can report a suspected breach of the planning scheme to the relevant local government, which may then investigate and enforce a planning scheme requirement. Local government is subject to the Equal Opportunity Act and is not permitted to discriminate against sex workers in the enforcement of the planning scheme unless an exception applies.

See Section 3.2.7 for further information about sex work discrimination in relation to local government.

XXV Note: 'Shop' is defined broadly in clause 73.03 of the Victoria Planning Provisions.

XXVI Previously the Equal Opportunity Act contained an exception that enabled accommodation providers to refuse accommodation to sex workers (under s 62). The *Sex Work Decriminalisation Act 2022* removed this exception, meaning that discrimination against sex work in the provision of accommodation is now unlawful.

Changes to the Public Health and Wellbeing Act

In December 2023, the brothel and escort agency section of the Public Health and Wellbeing Act will be repealed.¹¹⁸

This section of the Public Health and Wellbeing Act includes provisions for brothel and escort agency proprietors regarding:

- provision and storage of condoms
- use of condoms
- refusal of service
- evidence of medical examination not being displayed
- information for sex workers and clients
- provision of clean linen, showers and baths, and inspections.

This change will align with the repeal of the sex work service provider licensing system. Sex industry business operators and the sex workers who work there will still have responsibilities under the OHS Act to ensure a safe work environment.

The Department of Health has developed fit-for-purpose guidance for the sex industry which details the existing Victorian public health framework for STI and BBV management, and describes universal best practice prevention methods relevant to sex workers and sex industry business operators.¹¹⁹

Although the OHS Act has not been amended as part of sex work decriminalisation, from December 2023:

- WorkSafe will regulate both the OHS of, and workers compensation for, all Victorian sex work operations, not just licensed sex work operations, and
- sex work employers and employees will have the same general OHS rights, duties and protections that apply in all other workplaces in Victoria.

For more information on WorkSafe's role see Section 5.4.

Changes to advertising controls

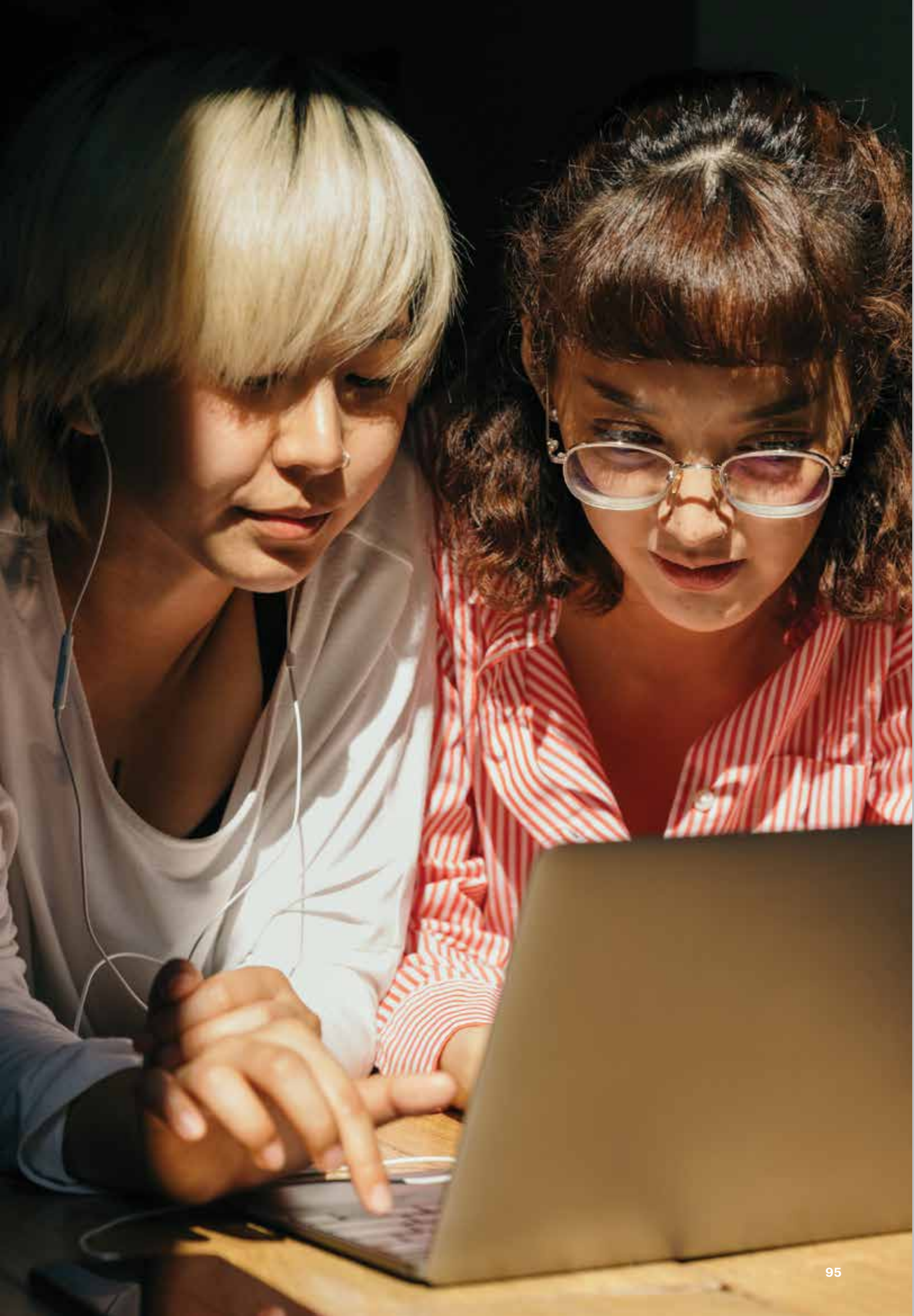
Under the first stage of changes, previous advertising restrictions included in the Sex Work Regulations 2016 no longer apply. Sex work advertisements in Victoria can lawfully now:

- describe the services offered or not offered
- be broadcast or televised
- be used to recruit for vacant positions for sex workers
- include references to safer sex practices
- include photographs or other pictorial representations, including of nudity
- use words associated with massage services.

Sex workers and sex industry businesses can now also publish ads without including their licensee or exempt registration number, advertise using partial or full body images, use nude images in internet ads and publish ads larger than 18 centimetres by 13 centimetres in a newspaper or other publication.

However, ads are still subject to the discretion of the relevant advertising host. Relevant federal and state laws and codes also apply, such as Australian consumer law and the AANA Code of Ethics.

For more information on discrimination relation to advertising services, please see Section 3.2.3 of this guideline.



Notes

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- 4 Michalowski, R. J., *Order, law and crime: an introduction to criminology* (New York: Random House, 1985) 6.
- 5 'Discrimination', *Victorian Equal Opportunity and Human Rights Commission* (Webpage) <<https://www.humanrights.vic.gov.au/for-individuals/discrimination>>.
- 6 'Positive duty', *Victorian Equal Opportunity and Human Rights Commission* (Webpage) <<https://www.humanrights.vic.gov.au/for-organisations/positive-duty>>. Victorian Equal Opportunity and Human Rights Commission, *Spent conviction discrimination guideline* (Final report, 2022).
- 7 'Gender inequality', *European Institute for Gender Equality* (Webpage) <<https://eige.europa.eu/thesaurus/terms/1182>>.
- 8 'LGBTIQ+ glossary of common terms', *Australian Institute of Family Studies* (Webpage) <https://aifs.gov.au/sites/default/files/publication-documents/22-02_rs_lgbtqiqa_glossary_of_common_terms_0.pdf>.
- 9 'Lawful sexual activity', *Victorian Equal Opportunity and Human Rights Commission* (Webpage) <<https://www.humanrights.vic.gov.au/for-individuals/lawful-sexual-activity>>.
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- 11 Ibid; Victorian Equal Opportunity and Human Rights Commission, *Spent conviction discrimination guideline* (Final report, 2022).
- 12 Planning Advisory Note 79 – Decriminalising sex work June 2022 (Vic), Amendment VC217.
- 13 'Lawful sexual activity discrimination', *Human Rights Claims* (Webpage) <<https://humanrightsclaims.com.au/discrimination/lawful-sexual-activity>>.
- 14 'Positive duty', *Victorian Equal Opportunity and Human Rights Commission* (Webpage) <<https://www.humanrights.vic.gov.au/for-organisations/positive-duty>>.
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