



By Rhiannon Reid

A sex worker working in a legal brothel in a Melbourne suburb recently had a gun pulled on her after refusing to have unprotected sex with a client.

The woman, who does not want to be identified, was physically and sexually assaulted and sustained a variety of injuries including a torn muscle in her shoulder, whiplash in her neck and post traumatic stress disorder.

This story was reported on in *The Age* newspaper on 13 July 2011, and sparked a number of opinion pieces, online blogs and social commentary.

When the woman asked the brothel owner whether she could lodge a WorkCover Claim, she was told that the WorkCover system did not apply to her. This is not true.

Sex workers are covered by the WorkCover system in Victoria.

To be eligible to have a claim accepted under the WorkCover system, you must have suffered an injury, illness or disease arising out of, or in the course of, your employment.

You must also be able to establish that you were a “worker,” as defined pursuant to the *Accident Compensation Act* (“the Act”), at the time of your injury.

The WorkCover system covers injured workers, including full-time workers, part-time workers, casual workers, and in many circumstances, sub-contractors.

# WorkCover

## and the sex industry

When the woman asked the brothel owner about lodging a WorkCover claim, she was told that she was employed as a sub-contractor at the brothel and was therefore not covered by the WorkCover system.

In many circumstances, where a person is employed as a sub-contractor, they may still be covered by the WorkCover system if they are able to establish that they are a “worker” under the Act.

Under the Act, a “worker” means a person who performs work for an employer or agrees with an employer to perform work at the employer’s direction, instructions or request.

To determine whether someone is a “worker” for the purposes of lodging a WorkCover Claim, consideration must be given to the following questions:

- Who sets the hours of work and who sets shift times?
- Is the employee able to choose their own hours of work or reject work?
- Does the employee work exclusively for the employer?
- How much of the employees income is derived from the employer?
- Who provides and maintains the equipment, materials, costumes, and uniforms necessary to perform the job?
- Does the employee have an obligation to work hours/shifts given to them?
- Can the employee delegate the work given to them?
- Who is responsible for deducting income tax?
- Is paid leave provided, such as annual leave and sick leave?

In the example provided above, the woman was required to attend the brothel for 40 hours per week on shifts set by the brothel. The woman was not free to set her own hours of work and was not able to reject work the brothel assigned to her.



The woman was expected to perform her work personally, and was not able to delegate her responsibilities or send someone else to work in her place. The woman also worked exclusively for the brothel in question.

Finally, equipment necessary to perform the job, such as a room, bed, sheets, shower, towels, and condoms, were all provided by the brothel.

Although the woman was responsible for deducting income tax from her pay, and was not given paid leave, overall, after all the above questions were considered, the woman was deemed a “worker” under the Act and was therefore covered by the WorkCover system.

The moral of this story is that if you are a sex worker in the State of Victoria, and suffer an injury, illness or disease arising out of, or in the course of, your employment, you may be covered by the WorkCover scheme and should lodge a WorkCover Claim.

*Rhiannon Reid is an expert WorkCover Lawyer at Maurice Blackburn Lawyers and has successfully represented sex workers working in the State of Victoria. Rhiannon is happy to assist you with any questions you may have about WorkCover.*

*Rhiannon can be contacted on 1800 810 812.*