

Discrimination

The Sex Work Decriminalisation Act 2022 (VIC) includes changes to legislation to better protect sex workers from discrimination. It is illegal to discriminate against someone on the basis of being a sex worker, or for engaging in lawful sexual activity such as sex work.

What has changed?

The Victorian Equal Opportunity Act 2010 (the Act) has been amended to include the protected attribute 'profession, trade or occupation.'

This has been done to protect Victorian sex workers from being discriminated against on the basis of their work, however will benefit people working in other industries as well.

Unfortunately sex work discrimination will not disappear overnight. However, if you have experienced discrimination due to your work, you are able to follow this up with the Victorian Equal Opportunity and Human Rights Commission (VEOHRC).

What is a protected attribute?

Protected attributes are characteristics, qualities, or traits that are illegal to discriminate against in an area of public life. This includes at work, shops, clubs, school, and when buying or selling something (including accommodation).

What is lawful sexual activity?

Under the Act, it is illegal to discriminate against someone based on their participation in lawful sexual activity, which includes sex work.

Previously, not all sex workers were protected by this part of the Act as some types of sex work were illegal, such as street-based sex work. This is one reason why decriminalisation is important for sex workers' rights.

EXAMPLES OF DISCRIMINATION

Direct discrimination

When someone treats another person unfairly due to that person being a sex worker or doing sex work.

- e.g. When a landlord denies someone's rental application due to the applicant being an independent escort.
- e.g. When a bank refuses to open or service a bank account for someone due to their income coming from the sex industry.
- e.g. When an accommodation provider allows visitors but evicts a sex worker for working from the accommodation.

Indirect discrimination

When there is a requirement, condition, or practice that is unreasonable and puts sex workers at a disadvantage.

- e.g. When a media company has a blanket rule prohibiting content of a sexual nature, preventing sex workers from being able to advertise their services.

Victimisation

When a sex worker is treated unfairly because they have made a complaint or drawn attention to unlawful discrimination. Victimisation is against the law.

- e.g. A sexually explicit entertainer being full rostered (not given any shifts) by a venue owner/manager for raising an incident of discrimination they witnessed with the VEOHRC.

You can find more information about the above in the *Victorian Equal Opportunity and Human Rights Commission's Sex Work Discrimination Guideline*.

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VEOHRC Dispute Resolution Process

Step One

Raise your complaint with the VEOHRC. You can get in touch with them by filling out an online form, sending an email to enquiries@veohrc.vic.gov.au, or calling 1300 292 153.

Step Two

Your application will be reviewed and the VEOHRC might ask for more information if necessary. A VEOHRC conciliator may then contact you to find out what outcome or resolution you are wanting to achieve. This might include;

- An apology,
- Financial compensation,
- A guarantee to stop the behavior,
- To be provided the services you were previously denied,
- Training to be provided to the person who discriminated against you.

Step Three

The conciliator will contact the person you are making a complaint against to see if they want to resolve the complaint. If they do, you will begin the process of conciliation. If they decline, you are able to take your complaint to the Victorian Civil and Administrative Tribunal (VCAT). You can also directly go to VCAT without first having to go through the VEOHRC conciliation process if that is your preference. See next for information about VCAT.

Step Four

Once the conciliation process commences, the conciliator acts as an impartial third-party who leads discussion and facilitates the dispute resolution process. This can involve providing education about the law, rights, and responsibilities. This process involves both you and the respondent, and takes place through informal meetings held either in person, online, or over the phone. In this process you will have to listen to the respondent's side of the story, which might be a confronting or upsetting experience.

Step Five

If conciliation is successful, the respondent will begin actioning the outcome that was agreed upon in conciliation. If conciliation is not successful, or the respondent will not participate in conciliation, you are able to take your complaint to the Victorian Civil and Administrative Tribunal (VCAT).



With your consent, someone else is able to make a complaint on your behalf. This could be a friend, family member, advocate, union, or lawyer. If you would like someone from RhED to make a complaint on your behalf, please get in touch.

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VCAT Dispute Resolution Process

Step One

First, you need to apply to VCAT to have your dispute heard. You can apply online, or by filing out a print-friendly form that you can email, post, or deliver in-person to VCAT, along with any supporting documentation.

Step Two

If your application is accepted, you will be contacted by VCAT and provided a case reference number. You will also be given a notice (as will the respondent) that informs you of the date, time and location of your hearing. There are different types of hearings at VCAT depending on the case, so you will also be told what kind of hearing will be held.

Step Three

If the person or organisation you are taking to VCAT does not agree with your version of what happened, you might need to participate in a hearing where you may have to give evidence in front of the Tribunal member (the decision maker in the case) and could be questioned about your evidence. The Tribunal member will make a decision on the facts of the case on the balance of probabilities – they will decide which version of events is more likely than not the truthful version.

Step Four

You attend your VCAT hearing online, on the phone, or in person. Many people represent themselves at VCAT, however you can also seek the support of a lawyer. Free legal support is available to you, and you can get in touch with RhED for some options. If you wish to be represented by a lawyer or advocate, you need to apply to VCAT first.

Step Five

After the hearing, VCAT will make a decision and give an order, either on the day or afterwards by mail. The order is a legal document which will inform parties what actions they need to take and by when. VCAT orders can include telling someone to do or stop doing something that breaches the EOA, or to pay compensation to you for any financial loss or injury you experienced. If the other party does not comply, you will need to get advice about enforcing the orders.

Privacy and confidentiality:

VCAT hearings are usually public however in some cases, VCAT can restrict access to cases. If you would like to apply for confidentiality, you can do so when you first apply to have your case heard. You can also email VCAT and ask for your information to be withheld on any orders made. You must follow certain steps (available online) when submitting protected information. This is an area where getting legal advice and support can help with making a successful application for confidentiality.

If you decided to submit a complaint to VEOHRC or VCAT, you can get in touch with RhED for support or referrals to legal services.