

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

CONTENTS

What to do when the police, immigration or taxation officers visit you

Introduction	2
Dealing with the Police	3
Summary of regulatory powers sex workers face across Australia [table]	7
New South Wales	10
Queensland	12
South Australia	14
Tasmania	16
Victoria	18
Western Australia	21
Northern Territory	23
Australian Capital Territory	25
Australian Federal Police	27
Dealing with Immigration Officials	29
Dealing with Australian Taxation Officers	31

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

This booklet is to help us when we talk to Immigration Officials, Police and other Australian Government agencies, so you better know your **rights and responsibilities**.

We are migrant sex workers.

We understand enough English to live our lives in Australia.

The words we use every day are different from the words used by Immigration Officials, Police or others when they visit us.

Anyone who is working in the sex industry in Australia may be contacted by Australian Government agencies at your place of work or through your advertising.

When approached by an Immigration Officer or Police, you have the right to remain silent and say that you need to have an interpreter and contact a lawyer (and this can be your immigration agency or even us at Scarlet Alliance!)

When we meet Immigration Officials or Police nerves can get to us! It can be hard to understand what they are saying.

Think about your privacy and confidentiality. Think who may overhear your details when you are talking with the Australian Government agency officer. Also think about your private life when you are giving a contact address. The Australian Government agency may write to you at the address you give them and this can cause problems at home if people you live with read or illegally open your mail.

If and when you do speak, Immigration Officers and Police will usually make short written notes and keep them as a record for further investigations. This is normal and may later be used as evidence.

The information in this booklet is not a full copy of the laws or your rights – it is a guide. There may be other laws that are relevant to you, however if you are having problems with Police, the Department of Immigration and Citizenship or the Australian Tax Office, we suggest you immediately seek legal advice.

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Dealing with the Police

Generally

(N.B. For W.A. check the W.A. section as these rights do not generally apply when dealing with W.A. police)

You have rights when dealing with the police.

All people—Australians and non-Australians alike—are treated equally before the law and safeguards exist to ensure that people are not treated arbitrarily or unfairly by governments or officials (http://www.dfat.gov.au/facts/legal_system.html). It doesn't matter if you are a permanent resident (PR) or not, therefore visitors to Australia enjoy the same right as everybody else but may have some conditions attached to their visa.

Australia is divided into eight state and territories. Some criminal laws, including sexual servitude and trafficking laws are regulated by the Australian Government and apply nationally in all the states and territories. More specific sex work laws are determined by state and territory governments. This is why the laws differ in each state and territory. In some places sex work is **decriminalised**, some places it is **legalised and licensed**, some places it is **illegal**. Planning laws, such as zones where brothels are allowed to operate are determined by local council in some states. What the laws are like depends on where you are in Australia and what part of the industry you are working in. **But regardless of where or how you are working, the government agencies have an obligation to abide by their organisation's code of practice when they come to your workplace. This document outlines your rights and responsibilities when this happens.**

The Migration Project at Scarlet Alliance has also made an overview on the laws and visas for people considering travelling to or within Australia for sex work. You can find it on our website in Chinese, Korean and Thai at:

www.scarletalliance.org.au/thai

www.scarletalliance.org.au/chinese

www.scarletalliance.org.au/korean

As a sex worker you have rights. When you are approached by Police or Immigration Officials:

- Don't panic if they want to talk to you.
- It is a good idea to give your name and address and be polite; if you are rude and swear Police may be able to charge you.
- If you are under 18 years old, it is also in your interest to give the Police your date of birth.
- It is an offence to give a false name and address to the police.

Everything you say will be on the record.

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

You should not say, write or sign any statements without having first spoken to a lawyer. You **do not** have to answer detailed Police questions;

- Whether they ask you at the police station, or question you on the spot;
- Whether they arrest you or don't arrest you.
- Whether or not an Immigration Official is with them.

Once you have stated your name and address, you can then use words such as “*I do not want to say anything at this stage*” or “*No comment*”.

You also have the right to ask the police:

- Their name, ID number, the station where they work and their rank
- Why they want the requested information;

If police arrest you, they must tell you:

- that you are under arrest;
- why you are being arrested;
- the officer's name or badge number;
- the station they are from.

When dealing with the police you have a right to legal advice and an interpreter if you need one.

If you struggle with or run from the police once they have arrested you, you risk being charged with resisting arrest or escaping from lawful custody

If police ask you to go to the police station to answer questions, you don't have to go unless you agree or you are arrested. You can ask them “are you arresting me?” Police should tell you that you don't need to answer their questions. Remember, you have the **right to remain silent** and the **right to legal representation** and if you are under 18 there must be a **responsible adult** (eg parent, guardian, youth worker, solicitor) present when you talk to the police. Otherwise whatever you say to police will probably be **inadmissible** in court, which means it can't be used as evidence against you (*Children (Criminal Proceedings) Act 1987* (NSW), s.13).

(If you are under 18 you should contact:

- National Children's and Youth Law Centre [<http://www.ncylc.org.au/welcome2.htm>] or
- Shopfront Youth Legal Centre [<http://www.theshopfront.org/7.html>]

for more advice as issues specific to under-18s are not covered in this resource.

The following weblinks will more appropriately address your specific situation and needs:

<http://www.lawstuff.org.au/>

http://www.theshopfront.org/documents/Police_Powers_and_Your_Rights_004524341v44.pdf.)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Searches – Police do not have an automatic right to search you unless they reasonably believe that you are carrying a weapon, illegal drugs or stolen property. Usually the police can only search you if you agree or if they have a warrant.

In the case of searches conducted on trans*, intersex, sex and/or gender diverse (ISGD) workers, you can ask for a Gay and Lesbian Liaison Officer (GLLO officer) as they are trained to work with the gay, lesbian and trans*, ISGD community. You also have the right to ask for a male or female officer to conduct the search.

Photos, Fingerprints and DNA – If you are over 14 and you have been charged with a criminal offence (ie a serious crime such as drug dealing or stealing – parking fines don't count), the police can take your fingerprints or a photograph of your face while you are in custody but only if this is necessary to work out your identity. If you are under 14, police need to apply for a court order to do this.

If police want to take your fingerprints or photograph and you are not in police custody, they must apply for a court order no matter how old you are.

Police must also apply to a court if they want to take a sample of your DNA (a hair sample or a saliva sample). They can only apply for an order to take your fingerprints, photo or DNA if they suspect you of committing a crime or have charged you already. If the court orders you to give a sample, you must go to the police station by the date you are given. If you don't go, the police can use "reasonable force" to get the sample.

In the Commonwealth *Crimes Act 1914*, section 3C:

frisk search means:

(a) a search of a person conducted by quickly running the hands over the person's outer garments; and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

ordinary search means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

(b) an examination of those items.

strip search means a search of a person or of articles in the possession of a person that may include:

(a) requiring the person to remove all of his or her garments; and

(b) an examination of the person's body (but not of the person's body cavities) and of those garments.

REF: http://www.austlii.edu.au/au/legis/cth/consol_act/ca191482/s3c.html 12/10/10

<http://www.comlaw.gov.au/Details/C2011C00233/Download>

N.B: In WA section 29 of the *Prostitution Act 2000* allows cavity searches by a medical practitioner or registered nurse. (See details in the table below)

The *Customs Act 1901* (Cth), section 219Q, allows for a Customs officer or a police officer to detain and search a person where a detention officer or a police officer suspects on reasonable grounds that a person is unlawfully carrying any prohibited goods.

"Prohibited goods" mean:

- Goods whose importation or exportation is prohibited by the Customs Act or any other law of the Commonwealth; or
- Goods whose importation or exportation is subject to restrictions or conditions under the Customs Act or any other law of the Commonwealth; or
- Goods subject to the control of customs.

The Act also authorises frisk search to be carried out, but that must be carried out by an officer of Customs who is of the same sex as the person being detained (section 219M).

<http://www.comlaw.gov.au/Details/C2011C00225/Download>

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

**A summary of regulatory powers sex workers face across Australia
{Visit www.scarletalliance.org.au/laws for more details about the laws
in your state or territory or contact your local sex worker organisation}**

Jurisdiction	Principal Act	Authorities
New South Wales	<i>Summary Offences Act 1988</i>	<ul style="list-style-type: none"> • Police require a search warrant to enter a brothel • Local councils are the main regulators of sex work • New South Wales Police do not have the power to conduct a body cavity search against the will of the person in custody
Queensland	<i>Prostitution Act 1999</i>	<ul style="list-style-type: none"> • Police are exempt from solicitation offences and can entrap then penalise workers for operating illegally in any way • Police above rank of Inspector do not require a warrant to enter a licensed brothel • With written authorisation from the licensing body police can search and seize items • Prostitution Licensing Authority
South Australia	<i>Summary Offences Act 1953</i>	<ul style="list-style-type: none"> • The commissioner, a senior police officer or any other police officer authorised in writing by the commissioner or senior police officer may at any time enter and search premises suspected to be a brothel
Tasmania	<i>Sex Industry Offences Act 2005</i>	<ul style="list-style-type: none"> • Local Councils have a say about where workers can operate • Police powers have been extended. i.e.: power to arrest without warrant, powers of entry without warrant, power of police officers at or above rank of sergeant to require financial information, police commissioner to serve order

SCARLET ALLIANCE MIGRATION PROJECT

GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

		to cease operating
Victoria	<i>Prostitution Control Act 1994</i>	<ul style="list-style-type: none"> • Police above rank of Inspector can at any time enter premises • Power is granted in certain circumstances to enter unlicensed premises without a warrant • Business Licensing Authority
Western Australia	<i>Police Act 1892</i> <i>Criminal Code 1902</i> <i>Prostitution Act 2000</i>	<ul style="list-style-type: none"> • Police may participate in an unlawful act with complete immunity, in order to secure a conviction. Entrapment is lawful • Police have the power to enter premises without a warrant. They can enter any premises 'suspected' of being used for prostitution. This includes private homes • Police have the power to search, seize and detain without a warrant OR charge. This includes the power to strip search or order a cavity search and you do not have to have actually been charged with a crime for this to occur (suspicion of intent). However the cavity search must be conducted by a medical practitioner or registered nurse but you can be detained until one arrives or taken to them by the police (<i>Prostitution Act 2000</i>, section 29). Sex workers can be detained for 'as long as is reasonably necessary' and police can use 'whatever force that is necessary' in order to carry out the search. • Sex workers do not have the right to remain silent. Refusal to answer questions or produce documents could result in two years' imprisonment • Police can also issue them with Move-on Notices and Restraining Orders. A Move-on Notice (accompanied by a map of three or four inner city suburbs) bans a suspected sex worker from entering the area for up to 24 hours, effective immediately

SCARLET ALLIANCE MIGRATION PROJECT

GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Northern Territory	<i>Prostitution Regulation Act</i>	<ul style="list-style-type: none"> • Police can enter at any time a premises they suspect is a brothel or escort agency by applying to police member above the rank of Sergeant • Escort Agency Licensing Commission
ACT	<i>Prostitution Control Act 1992</i> <i>Work Safety Act 2008</i> <i>Human Rights Act 2004</i> <i>Crimes Act 1900</i>	<ul style="list-style-type: none"> • Police can enter premises only if they believe on reasonable grounds that offences relating to child prostitution are occurring or are likely to occur • WorkSafe ACT inspectors have a wide range of powers, including the power to enter a workplace (such as a brothel) at any time to inspect the working conditions of employees and to ensure that health and safety standards are being met (s74; s78). • See details in ACT section below for a summary of the <i>Human Rights Act 2004</i> and <i>Crimes Act 1900</i>
Commonwealth	<i>Criminal Code Act 1995 (CCA)</i> <i>Crimes Act 1914</i>	<ul style="list-style-type: none"> • The CCA contains offences relating to 'slavery and sexual servitude' (Div. 270) and 'trafficking in persons and debt bondage' (Div. 271). Federal Police may seek a warrant to search premises where there may be material on those premises relating to sexual servitude, slavery or trafficking offences (Div. 270 & 271 CCA; s3E & 3F Crimes Act). The warrant may permit ordinary and frisk searches of persons at or near the premises. • A person may be required to provide their name and address to a constable who believes that person may be able to assist in the investigation of an indictable offence (being a Cth. offence punishable by more than 12 months' imprisonment) (s3V Crimes Act).

Reference:

Issues No. 8 2008 Sex workers and sexual assault in Australia Prevalence, risk and safety; **Dr Antonia Quadara**; Published by the Australian Institute of Family Studies. <http://www.aifs.gov.au/acssa/pubs/issue/i8.html#legal> (Accessed: 20/09/2010)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

THE IMPORTANCE OF TAKING NOTES AT THE TIME OR SOON AFTERWARDS

It is very important to take notes of what occurs in relation to the police investigation as it occurs, or as soon as possible after the event. You will be at a tremendous advantage (at Court) if you are able to do this.

NSW Police

You are not obliged to allow the police to enter your premises unless they present to you a search warrant. If the police show you the warrant, you should not resist or obstruct them. It is VERY IMPORTANT that you write down the details of the warrant, including valid date, where it can be used, and any other distinguishing details on it, file numbers, etc. The validity of the search warrant can be checked later and if it is found to be incorrect then the evidence obtained by reason of the warrant can be challenged. You should ask to see the identification of the Police Officers and also write down their name and badge numbers.

Reference:

THE THIN BLUE LINE; Helen Halfpenny, Senior Library Technician; May 2009
http://www.policensw.com/info/misc_gun/brothels.html#a1 (accessed 19/09/2010)

What to do if there has been a violation of your rights

Complaints

To complain about NSW police officers, contact:

- **By phone:** Customer Assistance Unit on 1800 622 571.
- **In person:** at the local police station to try to resolve the matter.

To lodge a formal complaint you **must do so in writing by completing the NSW Police Force Complaint Form** (at local police station or download at link to get a complaint form

http://www.police.nsw.gov.au/__data/assets/pdf_file/0007/104974/p964_nswpf_complaint_form.pdf) and

- **In person:** at your local police station
- **By post:** the Customer Assistance Unit, PO Box 3427, Tuggerah NSW 2259, or lodged online.

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

You can also complain about the conduct of NSW police officers through:

The NSW Ombudsman

- **In person:** 580 George Street Sydney 2000
- **By phone:** (02) 9286 1000
- **Freecall:** 1800 451 524

Or,

The Police Integrity Commission.

- **By post:** GPO Box 3880 Sydney NSW 2001
- **By fax:** (02) 9321 6799
- **By phone:** (02) 9321 670
- **Freecall:** (if calling within Australia): 1800 657 079
- **Online:** <http://www.pic.nsw.gov.au/ReportMisconduct.aspx>

In most circumstances complaints received by these agencies will be referred to the NSW Police Force to resolve.

Reference:

NEW SOUTH WALES POLICE FORCE; New South Wales Government; 1 April 2010
http://www.police.nsw.gov.au/services/additional_services/complain_about_a_police_officer (Accessed: 3/09/2010)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Queensland Police

The Prostitution Licensing Authority (PLA) regulates licensed brothels. Their staff are called compliance officers – they are not police. Compliance officers are authorised to inspect the premises at any times (ss 26, 52 *Prostitution Act 1999* (Qld)) and to check on brothel activities (section 101(c))

According to the *Prostitution Act 1999* (Qld):

- if police enter a licensed brothel under s 59 of the Act, they may with the written authorisation of the PLA require the licensee or manager to comply with s 60(c) (provide documents) or (d) (assist police), s 84
- if a police officer reasonably believes that a person at a licensed brothel may be a minor, the officer may require the person to provide particulars about their age, s 85;
- the police or the PLA may require the licensee or manager to provide their name and address, s 86;
- a licensee must display their licence, or a notice stating the licensee's licence number, the address of the brothel and the date on which the licensee's licence expires, prominently at the entrance to the brothel, s 87.

Police of the rank of inspector or above may enter or authorise in writing other officers to enter a licensed brothel when it is open for business, s 59. All details of any police entry to licensed brothels must be reported to the PLA, s 61. Under the *Police Powers and Responsibilities Act 2000*, you have a right to ask to see something that verifies their identity if they are not in uniform. If a police officer is in uniform they only need to state their name, rank and station.

Reference:

SEX INDUSTRY LAWS- QUEENSLAND; 20 May 2009

<http://www.scarletalliance.org.au/laws/qld/> (Accessed: 27/8/2010)

PROSTITUTION ACT 1999, 1 July 2010

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/P/ProstitutA99.pdf> (Accessed: 27/8/2010)

PROSTITUTION ACT 1999 Division 3-Powers of entry – Link:

Reference:

QUEENSLAND CONSOLIDATED ACTS; Australasian Legal Information Institute; 19 August 2010

http://www.austlii.edu.au/au/legis/qld/consol_act/pa1999205/ (Accessed: 3/09/2010)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Complaints

You can make your complaint about the Queensland Police Service (QPS)

- **In writing:** Queensland Police Service Headquarters, 200 Roma Street, Brisbane Qld 4000
- **By email:** QPS at escstatecoordinator@police.qld.gov.au.

If the matter is more serious, then you may complain to the Crime and Misconduct Commission (CMC), which has extensive powers to investigate the most serious cases, by telephone, fax, email, letter, in person (by appointment) or by using a complaints form on their website.

- **By phone:** (07) 3360 6060,
- **By post:** GPO Box 3123, Brisbane, Qld 4001
- **In person:** 140 Creek Street, Brisbane (you will need to make an appointment first)
- **Website:** <http://www.cmc.qld.gov.au/asp/index.asp>.

Reference:

MAKING A COMPLAINT AGAINST A POLICE OFFICER, Queensland Police
<http://www.police.qld.gov.au/Resources/Internet/services/documents/Making%20a%20complaint%20against%20a%20police%20officer.pdf> (Accessed: 9/09/2010)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

South Australian Police

SUMMARY OFFENCES ACT 1953

Power of police to enter suspected brothels

The Commissioner or a senior police officer, or any other police officer authorised in writing by the Commissioner or a senior police officer, may at any time enter and search premises which he or she suspects on reasonable grounds to be a brothel. **s 32.**

<http://www.legislation.sa.gov.au/LZ/C/A/SUMMARY%20OFFENCES%20ACT%201953.aspx>

POLICE (COMPLAINTS AND DISCIPLINARY PROCEEDINGS) ACT 1985 - SECT 17

17—Right of persons detained in custody to make complaint to Authority

(1) Where a person detained in custody wishes to make a complaint to the Authority about the conduct of a designated officer, any person performing duties in connection with the detention of the person must—

(a) at the request of the person, provide him or her with facilities to enable him or her to prepare the complaint and to enclose and seal it in an envelope; and

(b) on receiving the sealed envelope from the person for delivery to the Authority—
(i) ensure that the sealed envelope is plainly addressed to the Authority and marked as being confidential; and

(ii) cause the sealed envelope to be delivered to the Authority without undue delay.

(2) A request referred to in subsection (1)—

(a) must be made to a person other than the designated officer about whose conduct the complaint is to be made; and

(b) must be complied with as soon as reasonably practicable (but without there being any obligation to interrupt the carrying out of any other lawful procedure or function).

(3) Where a request referred to in subsection (1) is made to the designated officer about whose conduct the complaint is to be made, the officer must, as soon as reasonably practicable, advise the person of the requirement that the request be made to some other person who is performing duties in connection with the person's detention.

(4) Where a person receives a sealed envelope for delivery to the Authority under subsection (1), a person other than the Authority or a person acting with the authority of the Authority must not open the envelope or inspect its contents.

Maximum penalty: \$2 500.

(5) It will be a defence to a charge of an offence against subsection (4) if the defendant proves that the acts to which the charge relates were done inadvertently.

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

[http://www.legislation.sa.gov.au/LZ/C/A/POLICE%20\(COMPLAINTS%20AND%20DISCIPLINARY%20PROCEEDINGS\)%20ACT%201985.aspx](http://www.legislation.sa.gov.au/LZ/C/A/POLICE%20(COMPLAINTS%20AND%20DISCIPLINARY%20PROCEEDINGS)%20ACT%201985.aspx)

Reference:

SOUTH AUSTRALIAN CONSOLIDATED ACTS; Australasian Legal Information Institute; 6 September 2010

http://www.austlii.edu.au/au/legis/sa/consol_act/soa1953189/ (Accessed: 19/09/2010)

And http://www.austlii.edu.au/au/legis/sa/consol_act/padpa1985434/ (Accessed: 3/09/2010)

Complaints

Any person may make a complaint to the Police Complaints Authority (PCA) or to any member of the police force (except the officer complained about). You may also complain on behalf of another person. **Complaints should be in writing wherever possible.**

- **In person:** Police Complaints Authority, 5th Floor, East Wing, 50 Grenfell Street, Adelaide
- **By post:** Police Complaints Authority, Box 464 GPO, ADELAIDE SA 5001
- **By phone:** (08) 8226 8677
- **By fax:** (08) 8226 8674
- **By email:** pca@agd.sa.gov.au

If you need help in writing a complaint or you wish to discuss your complaint the staff of the PCA are available to help.

Reference:

POLICE COMPLAINTS AUTHORITY OF SOUTH AUSTRALIA; The Police Complaints Authority; 23 October 2002

<http://www.pca.sa.gov.au/> (Accessed: 3/09/2010)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Tasmanian Police

SEX INDUSTRY OFFENCES ACT 2005

PART 3 – Powers of police officers

Tasmanian police have the power to arrest you without a warrant if they believe that you are involved in offences relating to sex work, soliciting, or hindering or obstructing police officers (s13). This means they can arrest you without any evidence. The police officer may require you to give your full name, address and date of birth. It is an offence not to give the police this information (s13(3)).

A police officer of who is a sergeant or above may enter any premises without a warrant if they believe there is sex work likely to occur on that premises (s15). Any police officer may enter without a warrant if they believe they are preventing a crime from occurring (s15(3)-(5)). They may search, photograph and seize evidence without a warrant (s15(2)). The police may use force to enter (s15(3)).

s18. Power of police officers at or above rank of sergeant to require financial information

A police officer at or above the rank of sergeant may require you to state your source or income or show them your financial records (s18). Failing to provide such information, or lying about it, is an offence (s18(2)). Penalty: Fine not exceeding 10 penalty units.

Police are not liable for their actions under this section of the law, if they do their actions in good faith (s19).

http://www.austlii.edu.au/au/legis/tas/consol_act/sioa2005253/

Complaints

To make a complaint to the Tasmanian Police, you can

- **In person:** At your local police station
- **By phone:** Police Assistance Line on 131 444
- **By email:** Tasmania.police@police.tas.gov.au

Or make your complaint to the Office of the Ombudsman

- **In person:**
 - Ground Floor, 99 Bathurst Street, Hobart TAS 7000, or
 - 111 Cameron Street, Launceston TAS 7250
- **By post:** GPO Box 960 Hobart TAS 7001
- **By phone:** 1800 001 170 (free call in Tasmania for land lines)
- **By fax:** (03) 6233 8966
- **By email:** ombudsman@ombudsman.tas.gov.au

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Reference:

Tasmania Police; 6 September 2010 <http://www.police.tas.gov.au/about-us/service-charter/> (Accessed: 9/09/2010)

The ombudsman Tasmania; 9 July 2010

http://www.ombudsman.tas.gov.au/making_a_complaint/how_to_make_a_complaint (Accessed: 9/09/2010)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Victorian Police

The Major Sex Crimes Desk of the Victoria Police primarily monitors compliance with the *Prostitution Control Act 1994* (PCA).

- Police can enter any licensed or exempted brothel or escort agency in Victoria without a search warrant, provided that at least one police officer is an Inspector or above the rank of Inspector (s.62 PCA).
- During a visit the licensee or manager are required to give their name and address if asked by the police (s.58 PCA). If police believe a person in a brothel is under 18 they can ask to see proof of the person's age (s.59 PCA).

Victoria Police don't have an automatic right to search people who have not been arrested. However, they do have the right to search if there is "reasonable cause to believe" that a person is hiding drugs, dangerous weapons or stolen goods. Regardless of whether you are taken into custody police can search you if they want certain evidence or believe you are carrying a weapon. The police also have the right to search you if they have a court warrant (s10 *Control of Weapons Act 1990*).

Police must inform you why you are being searched and all searches must be recorded according to police procedures (s.10A *Control of Weapons Act 1990*).

See a lawyer, community legal centre or Victoria Legal Aid for advice first, especially if you have been charged with an offence. If you have been injured you should see a doctor as soon as possible and also get photographs taken.

Reference:

LIP: Legal Issues for Professionals; Page15-16

<http://www.ischs.org.au/portals/0/documents/lip.pdf> (Accessed 19/09/2010)

Prostitution Control Act 1994

A police officer who is an inspector or above may enter any sex work licensed premises any time, or the premises of a registered private sex worker anytime (s62.1). If you refuse entry the police may use force (s62.2). Obstructing a police officer from entering your work space is a crime (up to one year in jail) (s62.3). After taking such action the police must inform the Director of Consumer Affairs and the Business Licensing Authority about the activities (s62.4). If your home is not used for sex work the police may not enter without your written consent (s62.5).

The police can get a search warrant to enter premises that they believe might be a sex work workplace (s63).

A police officer above or at the rank of inspector may enter a premises without a search warrant if they believe evidence of a crime would be lost if they took the time to get a search warrant (s64).

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

The police must document why the need to enter the premises and the names of all the police present BEFORE they enter the premises (s64(2)-(3)). Police can use force to do this (s64(4)).

Police must not share personal information that they discover as part of their duty unless it is about the crime (s61Z).

www.legislation.vic.gov.au and click on "Victorian Law Today"

Reference:

VICTORIAN CONSOLIDATED LEGISLATION; Australasian Legal Information Institute; 10 September 2010
http://www.austlii.edu.au/au/legis/vic/consol_act/pca1994295/ (Accessed: 10/09/2010)

Complaints

You should make your complaint as soon as possible after an incident involving Victoria police officers acting in an improper or corrupt manner to:

- **In person:** Police Conduct Unit, Level 2 Flinders Tower, 637 Flinders Street, Melbourne VIC 3005,
- **By post:** PO Box 415, Melbourne VIC 3005
- **By phone:** 1300 363 101
- **By fax:** (03) 9247 3498
- **By email:** ethical.standards@police.vic.gov.au

A complaint about corruption and serious misconduct can be made to

- **In person:** The Office of Police Integrity (OPI) Level 3, South Tower 459 Collins Street, Melbourne Victoria 3000
- **By phone:** (03) 8635 6188, Toll Free: 1800 818 387, Fax (03) 8635 6185
- **By email:** opi@opi.vic.gov.au
- **By post:** GPO Box 4676, Melbourne Victoria 3000. (The OPI is not part of the police force).
- **Online:** <http://www.opi.vic.gov.au/index.php?i=42&m=23&t=1>

Victoria Police have Gay & Lesbian Liaison Officers (GLLO) who provide advice, assistance and referral. The GLLO unit aims to build trust between police and the GLBT community. If you are worried about dealing with local police or not happy with police response, you can contact:

Gay and Lesbian Advisory Unit

- **Contact person:** Sergeant Scott Davis
- **By phone:** (03) 9247 6944
- **Mobile:** 0409 534 154
- **By email:** melbourne.gllo@police.vic.gov.au
- **Online:** http://www.police.vic.gov.au/content.asp?document_id=30300

You can also find a list of Victoria Police Gay and Lesbian Liaison Officers in your area at:

http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=32780

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Reference:

COMPLAINTS ABOUT POLICE; Victoria Legal Aid; 2 January 2009 <http://www.legalaid.vic.gov.au/1891.htm>
(Accessed: 9/09/2010)

DEALING WITH POLICE; Jennifer Lord and Lynn Buchanan, updated in 2007 by Lee Matthews and Glyn Cryer using
2006 content. <http://www.over-the-rainbow.org/dealing-with-police.php> (Accessed: 16/09/2010)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Western Australian Police

PROSTITUTION ACT 2000

s23. Powers to obtain information

The WA Police currently have a range of powers which can be used in relation to the investigation and enforcement of offences relating to the provision of commercial sexual services.

Under the *Criminal Investigation Act 2006*, various police powers are collected together including powers to obtain search warrants, and enter premises to ensure peace and good order at a public place or where the officer has reasonable suspicion of acts of violence/breaches of the peace occurring.

In the area of organised crime, police may apply to the Corruption and Crime Commission (CCC) under Part 4 of the *Corruption and Crime Commission Act 2003* (CCC Act) for the grant of extraordinary powers, including enhanced powers of search, seizure, examination of persons and conduct of controlled operations, in respect of certain serious offences. The offences include money or property laundering (s.563A Criminal Code). Therefore, if the WA Police has a concern that sexual services premises are being used by organised crime for money laundering, police can potentially access extraordinary powers under the CCC Act.

The *Criminal Property Confiscation Act 2000* also provides for extensive powers to investigate and confiscate certain property such as unexplained wealth or the benefits from crime.

Under the *Prostitution Act 2000*, members of the WA Police are also afforded a number of specific powers to require a person to produce documents or things, provide information to police and answer questions (S23)

The police may direct a person to “move on” – as in leave an area – on the basis that the police suspects the person has committed or intends to commit an offence (s24).

The police may enter a premises anytime without a warrant if they believe that some activity related to sex work has taken place there, or records about sex work may be held there (s 26). The police may use force to do so (s26(4)).

The police can obtain a warrant for a 30-day period in order to enter a premises and take evidence of a crime (s27).

Undercover officers

A police officer is able to pretend to be a client or a sex worker in order to gain evidence on another person that they are a client or sex worker (s35). A certificate issued by the Police Commissioner authorises the officer to act as an undercover officer (s53). While under cover the police officer is able to do things that would otherwise be illegal (ie solicit for sex) (s56).

SCARLET ALLIANCE MIGRATION PROJECT

GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Confidentiality

If a police officer obtains information about a person in the course of duty, the police officer must not disclose this information unless the disclosure is in the course of duty, required by law, for the purpose of proceedings for an offence under the Prostitution Act, with the written authority of the Minister or the person to whom the information relates, or in other approved circumstances (s58).

Reference:

WESTERN AUSTRALIAN CONSOLIDATED ACTS; Australasian Legal Information Institute; 13 September 2010
http://www.austlii.edu.au/au/legis/wa/consol_act/pa2000205/ (Accessed: 3/09/2010)

Complaints

You can complain about the conduct of a police officer:

- **In person:** or over the phone to the Officer in Charge at the local police station or the police district office
- **By post:** Police Complaints Administration Centre, Level 10, Septimus Roe Square, 256 Adelaide Terrace, Perth WA 6000
- **By phone:** Police Complaints Administration Centre (08) 9223 1000
- **By faxing:** (08) 9223 1010
- **By email:** complaints.administration.centre@police.wa.gov.au
- **By phone:** Internal Affairs Unit Tel: (08) 9223 1038 or (08) 9223 1051

A copy of the complaint to the Commissioner of Police is sent to the Crime and Corruption Commission (CCC) and so you may receive letters from the CCC.

- **In person:** Corruption and Crime Commission of Western Australia, 186 St George's Terrace, Perth WA
- **By post:** PO Box 7667, Cloisters Square, Perth WA 6850
- **By phone:** (08) 9215 4888, ask for the Complaints Assessment Unit
- **Toll free:** 1800 809 000
- **By fax:** (08) 9215 4884
- **By email:** info@ccc.wa.gov.au
- **Online:** <http://www.ccc.wa.gov.au/Reporting/MakeComplaint/Pages/default.aspx>

Reference:

COMPLAINTS ABOUT THE POLICE; Legal Aid Western Australia; November 2009
<http://www.legalaid.wa.gov.au/InfoAboutLaw.aspx/default.aspx?Page=Police/Complaints.xml>
(Accessed: 9/09/2010)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Northern Territory Police

PROSTITUTION REGULATION ACT

Power of police to enter certain premises

Any member of the Police who is authorised in writing by the Commissioner of Police or a member of the Police Force of or above the rank of Sergeant is able to enter a place that is a brothel or is suspected of being a brothel **s52**.

Police can enter licensed escort agencies anytime and check the operator's licence and check compliance with that licence (**s52(3)**).

If the escort agency does not allow them entry the police may force their way into the building (**s52(4)**).

It is an offence (two years' jail) to prevent, hinder or obstruct police entering an escort agency (**s52(5)**).

After the police officer has entered the premises, the Commissioner of Police must serve a notice within 48 hours on the Chairperson of the NT Licensing Commission explaining the details of the police activity (**s52(6)**).

s50. Confidentiality

A person other than a member of the Police Force acting in the course of his or her duties as a member shall not divulge or communicate information which the person acquires by reason of being employed or engaged or otherwise concerned in or in connection with the administration or enforcement of this Act except:

- (a) with the consent of the person to whom the information relates; or
- (b) in connection with the administration or enforcement of this Act (the *Prostitution Regulation Act*).

Reference:

Northern Territory Consolidated Acts; Australasian Legal Information Institute; 12 August 2010.
http://www.austlii.edu.au/au/legis/nt/consol_act/prs317/index.html#p3 (Accessed: 3/09/2010)

Complaints

To make a formal complaint about an employee of NT Police, **it must be in writing** and forwarded to:

- **By post:** Ethical and Professional Standards Command, PO Box 39764, Winnellie NT 082
- **By phone:** (08) 8922 3411
- **By email:** ProfRespDivision@pfes.nt.gov.au
- **In person:** Ethical and Professional Standards Manager of the region or local area command to which the employee is attached.

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

If you have any enquiries regarding making a complaint or require the contact details of the relevant Ethical and Professional Standards Manager, telephone the Police Assistance Line on 131 444.

You can also make your complaint to the Ombudsman

- **Online:** <http://www.ombudsman.nt.gov.au> ,
- **In person:** Darwin Office 12th Floor, NT House, 22 Mitchell Street, Darwin NT 0800
- **In writing:** PO Box 1344 Darwin NT 0801
- **By telephone:** (08) 8999 1818, **Free call:** 1800 806 380
- **By fax:** (08) 8999 1828
- **By email:** nt.ombudsman@nt.gov.au

Reference:

COMPLAIN ABOUT A POLICE OFFICER; *Northern Territory Police*; 3 September 2010
<http://www.nt.gov.au/pfes/index.cfm?fuseaction=page&p=212&m=20&sm=38> (Accessed: 9/09/2010)

The Ombudsman NT <http://www.ombudsman.nt.gov.au/police/> (Accessed: 9/09/2010)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

ACT Police (also the Australian Federal Police)

PROSTITUTION ACT 1992

28 Entry by police

A police officer may enter a brothel or escort agency if the officer believes on reasonable grounds that—

- (a) an offence against section 20, 21 or 23* has been, is being or is likely to be committed on the premises; and
- (b) it is necessary to enter the premises for the purpose of preventing the commission or repetition of such an offence, investigating such an offence or apprehending an offender.

*s20: Causing child to provide commercial sexual services etc

s21: Proceeds of child prostitution

s23: Child on premises

Reference:

AUSTRALIAN CAPITAL TERRITORY LEGISLATION REGISTER

<http://www.legislation.act.gov.au/a/1992-64/current/pdf/1992-64.pdf> (Accessed: 27/05/2011) CONSOLIDATED ACTS; Australasian Legal Information Institute; 12 September 2010
http://www.austlii.edu.au/au/legis/act/consol_act/pa1992205/ (Accessed: 19/09/2010)

HUMAN RIGHTS ACT 2004

A police officer, while doing their job, cannot act in a way that is against a human right. A human right includes things such as the right to privacy and reputation, the right to equal protection of the law without discrimination. For a full list of your human rights go to part 3 of the *Human Rights Act 2004* at <http://www.legislation.act.gov.au/a/2004-5/current/pdf/2004-5.pdf>.

In making a decision police officers must properly consider your human rights (s40B).

CRIMES ACT 1900

ACT Police may seek a warrant to search premises where there may be material on those premises relating to 'sexual servitude' offences under the Crimes Act (Part 5; s194; s195). The warrant may permit ordinary and frisk searches of persons at or near the premises.

ACT Police may also enter premises in emergency circumstances, where an offence is being or likely to be committed, a person has suffered physical injury or there is imminent danger of injury to a person or damage to property, and entry is necessary for the purpose of preventing the commission of an offence (s190).

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

A person may be required to provide their name and address to a police officer who believes that the person may be able to assist them with their inquiries in relation to an offence which has, or may have been, committed (s211).

Complaints

The Australian Federal Police (AFP) Professional Standards area is responsible for investigating complaints about ACT Community Policing members, as well as AFP members operating outside of the ACT. Complaints can be made to AFP Professional Standards:

- **In person:** at any AFP office, as well as at any AFP Police Station
- **By post:** Professional Standards, AFP, GPO Box 401. Canberra ACT 2601
- **By phone:** Professional Standards Hotline (02) 6218 2377
- **By email:** PRS-ComplaintsCoordinationTeam@afp.gov.au
- **Online:** Using the form set out at www.afp.gov.au

If you are not satisfied with the outcome of your complaint, the Commonwealth Ombudsman (as the Law Enforcement Ombudsman) can also receive complaints about AFP members, including those who provide policing services in the ACT. Complaints can be made about the conduct or actions of individual AFP members; or the policies or procedures of the AFP as an agency:

- **By post:** GPO Box 442, CANBERRA ACT 2601
- **By phone:** 1300 362 072
- **By email:** ombudsman@ombudsman.gov.au
- **Online:** <https://forms.australia.gov.au/forms/ombudsman/ombudsman-complaint-form>

References:

MAKING A COMPLAINT ABOUT THE AUSTRALIAN FEDERAL POLICE;
<http://www.afp.gov.au/~media/afp/pdf/m/making-a-complaint-about-the-afp.ashx> (Accessed 30/05/2011)

AUSTRALIAN CAPITAL TERRITORY OMBUDSMAN
<http://ombudsman.act.gov.au/pages/making-a-complaint/complaints-the-ombudsman-can-investigate/australian-federal-police.php> (Accessed 30/05/2011)

COMMONWEALTH OMBUDSMAN
<http://www.ombudsman.gov.au/pages/our-legislation/australian-federal-police/> (Accessed 30/05/2011)

The Australian Capital Territory Ombudsman <http://ombudsman.act.gov.au/pages/making-a-complaint/complaints-the-ombudsman-can-investigate/australian-federal-police.php> (Accessed: 30/05/2011)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Australian Federal Police

Federal Police may also enter your workplace while investigating slavery, sexual servitude or people trafficking offences. Sometimes they may enter your workplace with officials from other departments, such as the Department of Immigration and Citizenship, Centrelink or the Australian Taxation Office.

The police should have identification badges (which includes photo identification) and can only enter premises with your consent or if they have a warrant.

The Federal Police also have separate powers relating to terrorist acts and offences. Under anti-terrorist legislation, Federal Police have increased stop, search, entry and detention powers. These are unlikely to be used in brothels, but always ask if you are uncertain about the powers police are searching, questioning or detaining you under.

CRIMINAL CODE ACT 1995

Division 270—Slavery, sexual servitude and deceptive recruiting

Division 271—Trafficking in persons and debt bondage

CRIMES ACT 1914

A warrant can be issued to police to search a place or a vehicle if there are reasonable grounds for suspecting that there is, or will be within 72 hours, evidence at that place (s3E). The police officer authorised on the warrant can search for and record fingerprints and take samples for forensic purposes. They can search for and seize the kinds of evidence that are specified on the warrant.

Police can seize other things if they have reasonable grounds to believe that those things are also evidence of the offence for which the warrant was issued, or that the things are evidence of another serious crime, or that they are evidential material or tainted property under the *Proceeds of Crimes Act 2002* but the police can only seize those things if they also believe on reasonable grounds that seizure is necessary to prevent the things being concealed, lost or destroyed or to prevent their use in committing another offence (s3F).

For a frisk search or ordinary search to be conducted of a person at or near the premises, it must be stated in the warrant and there must be reasonable grounds to suspect that the person has any evidence or seizable items (s3F). Seizable items in this sense means anything that could be dangerous (such as a weapon) or could be used to help someone escape from lawful custody. Police can also seize these things if they find them on the premises being searched.

If the warrant is in relation to a place, they must give a copy to the occupier and if it relates to a person, they must give a copy to the person (s3H).

References:

COMLAW; www.comlaw.gov.au (Accessed 30 May 2011)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

LIP: Legal Issues for Professionals; Page 15
<http://www.ischs.org.au/portals/0/documents/lip.pdf> (Accessed 19/09/2010)

Complaints

The complaints process for the AFP is the same as that for ACT police as federal police also work as the ACT police. See the section above in the ACT section on how to make a complaint.

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Dealing with Immigration Officials

If you are working in the sex industry in Australia you may be contacted by the Department of Immigration and Citizenship (DIAC) at your workplace or through your advertising if they believe your workplace employs workers who don't have a visa that allows them to work in Australia.

You can check your visa status (including any work rights) through DIAC's internet site, Visa Entitlement Verification Online (VEVO) for Visa Holders

(<http://www.immi.gov.au/managing-australias-borders/compliance/working-legally/evo-for-visa-holders.htm>)

Immigration officers who visit your workplace must have their official ID and a valid search warrant or the consent of the business owner to enter and are expected to tell the person in charge (the owner or approved manager) the purpose of the visit. They:

- can search the entire premises, handbags and personal effects
- can only use reasonable force if deemed necessary and can only handcuff a worker if they pose a risk of escaping, self-harm or harm to others
- should allow a worker to cover up if undressed
- can ask workers to remove outer clothing such as a jacket or coat
- can conduct a pat down search of any person detained
- can ask for ID such as a passport, driver's licence, or student or Medicare card from everyone on the premises.

You should provide immigration officers with the name and number of your migration agent if your matters are dealt with by them. It is important to know that Immigration has the authority to enter premises to gain access to people and that they may ask for records of hours worked. If you don't have a migration agent you can contact us for a referral.

Ask the immigration officer to be aware that you are concerned about your privacy and confidentiality and ask what they will do to protect your information. Make sure they understand that you don't want other people to have access to your information.

If you are detained and not allowed to leave, you can request an interpreter, and you have the right to not answer questions until one is provided. You have the right to obtain legal advice from a lawyer, migration advice from a migration agent or consular advice from an embassy official. You must be 'afforded all reasonable facilities' to seek legal advice (s.256 Migration Act 1958).

You may be required to answer questions without being given an opportunity to obtain legal advice to determine whether you are an unlawful non-citizen' (s.257 *Migration Act 1958* (Cth)). The penalty can be up to six months' imprisonment for not answering, or giving false or misleading answers. If you are detained you should seek legal advice as soon as possible.

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

If you are contacted by phone, it is OK to use only your work name and not give any details as you can't verify that caller is genuinely from Immigration. Instead, ask the caller for their name and number and call them back. From our experience you'll almost never be contacted by Immigration by phone. It's very likely to be a prank call, (someone pretending to be Immigration or Police).

Reference:

COMLAW; <http://www.comlaw.gov.au/Details/C2011C00355> (accessed 22/6/2011)

LIP: Legal Issues for Professionals; Page 17

<http://www.ischs.org.au/portals/0/documents/lip.pdf> (Accessed 19/09/2010)

You can provide a compliment, complaint or suggestion to DIAC by:

- Use the department's feedback form and post written feedback or complaints to Client Feedback Coordinator, GPO Box 241, Melbourne Vic 3001
- Telephone the Global Feedback Unit during business hours at 133 177
- Write to: The Manager, Global Feedback Unit, GPO Box 241, Melbourne Victoria 3001
- Complete the tear-off feedback form attached to the Compliments and Complaints brochure.
- Contact them directly at your nearest Immigration office.

Immigration staff acting in an improper or corrupt manner should be reported to the Commonwealth Ombudsman in writing, by phone, in person or by using the Ombudsman online complaint form.

- **In writing:** GPO Box 442, Canberra ACT 2601
- **By phone:** 1300 362 072 Fax: (02) 6249 7829
- **By SMS:** 0413 COM OMB (0413 266 662)
- **By email:** ombudsman@ombudsman.gov.au
- **Online:** <http://www.ombudsman.gov.au/pages/contact-us/>

Reference:

COMPLIMENTS AND COMPLAINTS; Department of Immigration and Citizenship

<http://www.immi.gov.au/contacts/forms/services/#b> (Accessed: 9/09/2010)

Commonwealth Ombudsman <http://www.ombudsman.gov.au/pages/contact-us/> (Accessed: 9/09/2010)

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

Dealing with tax officers

The Australian Taxation Office (ATO) may require any person or business, in relation to tax matters,

- to provide any information it deems relevant and;
- to provide any documents it deems relevant.

It may conduct an audit of any person's affairs. However, it does not have access to information or documents held by lawyers on behalf of a client. Also, the ATO has said that it will not seek to access auditor's papers or papers prepared by a public accountant who gave tax advice to a client (<http://www.ato.gov.au/corporate/content.aspx?doc=/content/51665.htm>).

The ATO has an unrestricted right of access to all buildings, places, books, documents and papers (*Income Tax Assessment Act 1936*, section 263, with a similar provision in a range of other taxation Acts). This means that the ATO can examine records in any building without a search warrant. In certain cases such as if the ATO have reason to think that documents may be destroyed or altered or in criminal tax investigations, they can:

- carry out a surprise raid;
- gain entry by force, if necessary;
- open safe-deposit boxes by force, at a bank or elsewhere, if necessary;

In these cases the tax office will give you reasonable time and opportunity to talk to your representative after the access.

In all cases of review or audit the ATO can:

- photocopy all documents which they find (but they cannot take the documents away with them);
- make reasonable use of the taxpayer's workspace, photocopier, phone, light, power and other facilities;
- demand information as to where documents are located

In these cases the tax office will give you reasonable time and opportunity to talk to your representative after the access.

Large fines are prescribed for refusing to comply with any of the ATO's demands.

Reference:

<http://www.ato.gov.au/corporate/content.aspx?doc=/content/25923.htm>

<http://www.comlaw.gov.au/Details/C2011C00427/Download>

You can give them information without other people getting to overhear or know the information, by using one of these options:

SCARLET ALLIANCE MIGRATION PROJECT GUIDE TO YOUR RIGHTS AND RESPONSIBILITIES WHEN DEALING WITH POLICE, IMMIGRATION OR TAXATION OFFICERS

- Ask to use a room at your workplace in order to have privacy. Ask to have two ATO officers present in the room to avoid potential improper or corrupt behaviour. Give only the required information.
- Refer the ATO directly to your accountant or tax agent.
- Give them your Australian Business Number (ABN) if you have one.
- Ask to have the ATO officer's business card and call or email them back to give your details later when you are somewhere private.
- Write down your name, date of birth and address details and hand it to them, or write to the ATO with your details. You need to be prepared for them to contact you or write back, so you must give an appropriate address. Address options that are acceptable to the ATO include:
 - Your tax agent or accountant's address
 - A PO box
 - Your residential address
 - Another nominated address

You must respond if the ATO writes to you at the address you have given, otherwise this may result in compliance action from the ATO.

They should not ring through your details whilst other people are there and can hear the conversation as this may breach your privacy. Details may include your full name, date of birth, address or any other personal information about you.

Reference:

SWOP NSW, "The Professional" Issue 57, 2006