

SWOP-Sex Workers Outreach Project
<http://www.swop.org.au/resources/silk-part1.html>

THE SEX INDUSTRY LEGAL KIT FOR SERVICE PROVIDERS + REGULATORS

Compiled by the Sex Workers Outreach Project, NSW
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Funded by the Law Foundation of NSW

DISCLAIMER IMPORTANT NOTE :: THIS INFORMATION IS NOT LEGAL ADVICE

This information from SWOP is not legal advice, it is only a guide and you should seek legal help if you have any problems. Changes in legislation may occur quickly. We recommend that you get advice from a solicitor or legal adviser before acting in any of the areas mentioned. A list of legal contacts can be found in the back of this booklet.

The information in this book applies to people working in a sex industry businesses in NSW only. Workers in other states should contact the local sex worker project. (See Referral list)

INTRODUCTION

This booklet has been written in response to questions raised about the sex industry from a variety of service providers to the sex industry. The booklet aims to introduce and profile the industry, as well as cover the range of regulatory bodies which oversee the industry since some of the major reforms instigated by the Woods Royal Commission and carried through in the 1995 Disorderly Houses Amendment Act.

Information has been compiled from a range of sources, including SWOP staff, sex industry workers, managers and employers and many services providers.

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Introduction

First the good news - sex work is legal in NSW. Any person of any gender over 18 years old may provide sexual services to any person over the age of consent in exchange for money, goods or favours. Running, or working in a sex industry business in NSW is legal as long as it is conducted within the legislative framework.

In 1995 there were major changes to the sex industry regulatory framework. These occurred at a time of intense public and political attention to the widespread police corruption associated with the sex industry, revealed by the Wood Royal Commission. The 1995 amendments gave power to councils to regulate sex industry businesses while decreasing the regulatory role of the police service.

Summary of the 1995 changes to the laws regulating the sex industry in NSW. The major new laws regulating the sex industry in NSW state that:

- * Brothels are any premises used for the purposes of prostitution. This can include premises such as massage businesses, strip clubs etc. where sexual services are also provided.
 - * Brothels are regulated by local councils
 - * The definition of a brothel can include one worker working from their own home or premises
 - * Prostitution is legal and by itself is no longer a reason to have a business closed
 - * Support staff (receptionist/front of house, security, managers) can now be legally employed
 - * No one can force or 'unduly influence' another person to become a sex worker
- Laws on prostitution that remains unchanged are:
- * Support staff (friends, partners) for street workers can be charged with 'living off the earnings'
 - * Street workers can be charged with soliciting and working near or within view of certain places

Who works in the sex industry?

The majority of sex workers choose to work in the sex industry because of the flexibility and range of options that the industry provides. Sex workers have varying attitudes towards the industry, depending on the level of 'self care' versus 'burn out' they may be experiencing. Factors such as education, access to services and attitudes of friends, bosses and clients will also colour workers impressions of the industry, much the same as in any other client service industry. For workers from non-English speaking backgrounds (NESB), there may be a variety of reasons for sex working, and it may be coloured by the migration experience and the visa category that the worker is employed under. Working in the sex industry is a legal activity if conducted in accordance with the law. To work within the law in NSW sex workers need to be 18.

What is a sex industry business in NSW?

The Disorderly Houses Amendment Act 1995 defines a 'brothel' (sex industry business) as 'premises habitually used for the purposes of prostitution...even though used by only one prostitute (worker) for the purposes of prostitution'.

What are the different types of sex industry businesses?

The sex industry in NSW consists of a variety of workplaces which have been established to meet the different needs of sex industry clients. Businesses vary in size, services offered, cost, location, working conditions and clientele. The most common form of sex industry business is a small to medium size brothel run by an owner/manager who may still work in the business and who employs 3-6 other workers. Other owners include single or partnership sex workers in home occupation settings. There are also larger brothels which may have owners with no experience as sex workers or prior industry knowledge. Types of sex industry businesses include:

Brothel

- * established in residential or commercial area
- * small (2-4) rooms or large (10 -20) rooms
- * specific services at a fixed price
- * workers on shifts
- * 'drop-in' and regular clients
- * receptionist, manager and security on premises
- * business takes 40-50% of income

Massage Parlour*

- * established in residential or commercial area

- * small (2-4) rooms or large (10-20) rooms
- * may have council approval as a massage business
- * advertise as a 'massage service'
- * hand relief, body slide and nude massage services
- * extra services by negotiation
- * 'drop-in' and regular clients
- * receptionist, manager and security on premises
- * business takes 40-50% of income
- * may not identify as sex industry business

Private Worker

- * established in residential or commercial area
- * 1-2 workers
- * a home or rented residence
- * appointments by telephone
- * services and prices by negotiation
- * regular clients seeking privacy

Escort Services

- * established in residential or commercial area
- * appointments by mobile phone
- * services and prices by negotiation
- * job usually in hotel or client's home

Street Sex Workers

- * high profile but small percentage of the sex industry
- * work in established street areas
- * solicit clients on street or in car
- * services and prices by negotiation
- * job usually in 'safe house', hotel or car
- * regular clients

Safe Houses

- * room rental to clients of sex workers
- * services and prices by negotiation with sex worker
- * may provide PPE equipment (condoms, gloves, lube, dams, etc.)

Strip Clubs, B+D Parlours, Private Clubs

- * may provide a sexual service
- * may not identify as sex industry business

* Massage Parlours may be operating in breach of the Summary Offences Act. What are the types of services offered by the sex industry? The services provided by sex workers meet the many demands by clients for sexual services. This may take many forms: a 'chat' or counselling session with a client involving no sex; a full body massage with hand relief; allowing the client to come on a selected part of the body such as the breasts; oral sex with a condom; full penetrative vaginal or anal sex; specialist services such as piercing of body parts, discipline, fantasy shows, cross dressing; urination on client or client on worker and so on. The main thing is that the client is happy and the worker does not overstep her/his boundaries of what feels OK for them. The majority of clients want to come ASAP and leave in a pleasant mood.

Who are the clients of the sex industry?

Clients of the Australian sex industry are as diverse as the Australian community and it's tourists and business visitors. Clients cover all demographics from the invalid pensioner who saves up for a monthly visit, to a high court judge or media tycoon who may pay for a worker all night. Clients from diverse cultural backgrounds may also desire workers from different backgrounds. Just as workers are different, clients needs are different. Clients are primarily male (98%), although heterosexual couples are becoming more common as attitudes change. As the responsibility of the worker around presenting the 'safe sex' message increases, the publication of client resources in many languages is essential.

What is the definition of providing a sexual service or 'doing sex work'?

The law says that prostitution (sex work) in NSW is defined as sexual intercourse with, or masturbation of, another person for money. Masturbation has been interpreted by the courts to include hand jobs and body slides. Many of the legal definitions of a sexual service are not clear and can be interpreted by council staff, the courts and police.

What is the definition of sexual intercourse?

Sexual intercourse is defined as including the introduction into the vagina, anus or mouth of another person of any part of the body or an object controlled by another person. An object can include a dildo or vibrator or cunnilingus.

Is a hand job, nude massage or body slide a 'sexual service' under the law?

Hand jobs and body slides have been defined as sexual services by the courts. Nude massage and other services can still be defined as a sexual service by the police, council workers and courts.

What is the legal age for a sex worker?

The legal age for a sex worker is 18. A sex worker under the age of 18 is considered by law to be a 'child', however they cannot be charged with working as a child prostitute. Child protection laws which give powers to police and community services to take action to protect children who they think may be 'at risk' of harm. A male, including a male sex worker commits an offence if he is under 18 (for a male client) or under 16 (for a female client.) A female, including a female sex worker, commits an offence if she is under 16 for a male or female client. More serious criminal offences exist where someone forces a child to participate in sex work, obtaining benefit from child prostitution, and/or allows premises to be used for child prostitution. Clients of under age sex workers can also face serious criminal offences.

What is the legal age for a client?

For male sex workers, male clients need to be 18 and female clients 16, for Female sex workers' male and female clients need to be 16. It is an offence for any Male over the age of consent, including sex workers, to have sex with under age males. Age of consent laws mean that the age of clients of sex workers are different for male and female sex workers. The law is not clear for transgender sex workers and transgender clients.

Sex workers and their children

Any child (under 18) in a brothel can be considered 'at risk' of harm. This can include private workers and could lead to action by the Department of Community Services (DOCS) to protect the child. If a parent is a sex worker it can be used in the Family Court as evidence. However being a sex worker does not automatically disqualify you from being granted custody.

Is it legal to advertise sexual services or to employ sex workers?

No! It is an offence in NSW to advertise a sex worker or a sex industry business. The law says that 'a person shall not publish an advertisement for a brothel or a prostitute' or 'advertise for sex worker staff'. These laws are rarely enforced. Some newspapers do not accept sex industry advertisements while others only accept discreet or legal ads that do not use the term 'massage'.

Can a massage service advertise and provide a sexual service within the law?

No. It is an offence to advertise or use any premises that are advertise as 'massage, sauna baths, steam baths, facilities for physical exercise, photo studios or services of a like nature, for the purpose of prostitution or soliciting'. These laws are not always enforced by the police but are more likely subject to action by councils.

What is soliciting? Is soliciting illegal?

Soliciting involves an active approach or offer to someone them to purchase a sexual service. In massage parlours, simply offering your services as a sex worker for may be enough to be soliciting, unlike street soliciting, which is only illegal if it is more 'active' (see Street Work section). It is an offence to solicit in licensed premises or in, near or within view of a church, school or hospital, and near or within view of a dwelling, or in a business claiming to be a non-sexual massage service. Soliciting is a very uncertain legal area, it is open to interpretation and if the case is taken to court, it is up to the magistrate to decide the verdict.

Is street sex work Legal?

Street sex work and soliciting is legal in NSW but only in certain areas. It is illegal to solicit within view of a residential dwelling , church, hospital or school. People can still be charged with living off the earnings of a street worker. Street sex workers can be fined for loitering by local council staff. Police can fine street sex workers for not following a 'reasonable' direction.

Is stripping and sex work legal in licensed premises? Stripping is legal in NSW. Owning a business where stripping occurs is legal but is subject to local council business approval, and restricted in some types of licensed premises. Strippers working in licensed premises may need to be 18. Licensees can be in breach of their licence (dependant on the license) if they employ strippers who perform 'indecently' (full nudity, simulated or real sex and audience participation) or sex workers. Sex workers can be charged by police with soliciting and working on a licensed premises, however these laws are rarely enforced.

Do security staff need to be licensed in the sex industry?

Security staff in NSW (including those working in the sex industry) now have to be licensed. Information is available from the police and the Security Industry Registry.

Employment conditions in the sex industry

The working conditions of employees and contractors in the sex industry are established by written and/or verbal contracts and, for employees, by industrial awards. All employees are entitled to get the pay and conditions contained in these contracts and awards or take legal action to enforce these conditions. Employers and people in control of workplaces also have general obligations to maintain safe and healthy workplaces under occupational health and safety legislation. Employers of workers (including in many cases) must also maintain workers compensation insurance.

Are most workers in the sex industry employees or contractors?

Some workers in the sex industry will be regarded as employees and others will be considered 'independent contractors'. The basic difference is that an employee

works for another person where an independent contractor works for themselves and provides specific services to someone operating a sex industry business. Employees and contractors have different rights: independent contractors cannot, for example, claim annual leave or long service leave from the people they 'work for'. A large number of sex workers are probably independent contractors, but the distinction is less important in many circumstances because workers compensation, occupational health and safety, tax and superannuation laws may treat sex workers who are independent contractors as if they were employees. See WorkCover and Industrial Relations sections in the 'Regulators' section.

Contract workers from outside Australia

Employer contracts are a system which enable women to come to Australia and work in the sex industry. The contract is pre-arranged in the homeland with the agent and the worker. The agents who recruit the workers can be women who have been contract workers. Contracts generally provide workers with a visa, airline ticket and passport arrangements in return for a set amount of money. It also details where the women are to work (guaranteed work) and accommodation arrangements. Not all women on contracts should be considered part of the 'sex slave trade'.

What happens if an employer, client or a contractor is injured in the workplace? If an employee contracts an illness or disease or sustains injuries as a result of their day to day activities, they should inform the employer who may be liable for compensation. A contractor who contracts an illness or disease or sustains injuries as a result of their day to day activities may seek compensation from the owner of the business or the client. A client who contracts an illness or disease or sustains injuries as a result of their use of the service may also seek compensation from the owner.

STRATEGIES FOR REGULATORY AUTHORITIES WORKING WITH THE SEX INDUSTRY

Strategies developed by regulatory authorities need to recognise and support existing self-regulatory practices within the sex industry. In spite of laws and the behaviour of regulatory staff, the sex industry, have in many cases been able to maintain high international standards of safe sex practice in the workplace.

Local regulatory frameworks which do not provide equitable pathways for sex industry businesses to seek compliance, can lead to the creation of a two-tier sex industry consisting of approved and unapproved businesses.

The following scenarios describe some successful collaborations:

Some local councils have developed sex industry regulation policies in consultation with the local industry which have been successful in striking a balance between the needs of the local sex industry, their clients (most of whom are local residents) and the local community. In some rural areas council staff and police work closely with WorkCover and Health service providers in providing a holistic response to local issues.

The Police Service has worked with SWOP and the sex industry in the training of Police Sex Worker Liaison Officers at stations in appropriate areas across Sydney. Kings Cross police have worked with street sex workers to improve workers knowledge of legal work areas and to improve communication between both parties. This has led to crucial information being provided to police by industry workers.

WorkCover and Health have worked with SWOP and the sex industry in promoting health and safety standards. Both authorities have worked with SWOP and the local sex industry in providing information workshops tailored to the needs of the local industry which have improved communication between all players. WorkCover has funded a Health and Workplace Safety project working from SWOP.

The Attorney General's Department has funded a project to assist the sex industry to operate within laws concerning advertising and employment.

Government Departments and regulatory authorities should be aware that complaints about the sex industry may arise from competitors, disgruntled clients and workers. People impersonating departmental and regulatory authority staff are committing criminal acts. Staff procedures should re-emphasise the importance of staff identification and authorisation procedures when working with the sex industry.

ISSUES FOR LEGAL SERVICE PROVIDERS TO CONSIDER

Legal advisers may be requested by workers and owners in the sex industry to provide information, advice and representation in industrial, criminal, compensation, family planning and other matters. The following points may assist legal advisers when working with the sex industry.

Legal system, lawyers and sex workers

Sex workers knowledge of their legal rights and their ability to exercise their rights will be effected by factors such as inexperience in the industry, their understanding of and access to legal information and advice, their literacy skills, their first language, past experience with legal matters (ie court) It can also depend

on the level of support from management, as to whether workers are aware of their legal rights. Privacy and Confidentiality Sex workers may decide not to tell their partners, family or friends anything about their work. They may also decide not to identify with 'prostitute' as an occupational category on a police charge sheet. They may be threatened with disclosure in family court hearings or to their children's school or their alternative workplace. Workers may not have informed the local council, the tax office or the local community of their business activities.

Prejudice against sex workers

Prejudiced attitudes towards sex workers, which do not recognise the legality and value of sex work nor the skills and abilities of sex workers, are found in the general community and amongst sex workers. These prejudices may effect a workers ability to secure loans, child care, housing, employment, and also their social lives. Persuasive moral arguments condemning sex workers can be effective in undermining workers self esteem and recognition of their legal rights.

Arguments may include the notion that sex workers are 'carriers of disease' in society. This effects workers of all backgrounds. These attitudes, when internalised by sex workers coupled with prejudiced attitudes by regulatory staff lead to the low reporting rates of violence against sex workers to the police. There is often little reporting by street sex workers of assaults. For Indigenous workers and workers from a non english speaking background, there may be the added effects of racism, or prejudiced views regarding sex slavery.

Stereotypes

A lower percentage of sex workers are recovering addicts than some of the other professions who may provide workers with care (ie nurses or care workers). 90% of workers do not work on the streets and do not present the public "image" of a sex worker despite the media's continued focus on this one area. Many workers are proud of their chosen profession and have no qualms about disclosing that they are a worker. As the industry becomes more recognised, pride increases. Most workers make informed choices about working in the profession and are aware of the possible risks involved.

Communication

Sex workers come from diverse class, gender, cultural and age backgrounds and have varying levels of education, literacy and English language skills. Some NESB workers may need translators to negotiate other services, and have the right to say 'yes' or 'no' to the services. Indigenous workers may be effected by issues such as whether they were brought up by their biological or white parents. If brought up by white parents, their knowledge of legal systems and ways of communicating in white systems may be more informed. If brought up by biological parents, there may be more suspicion of white authorities and less awareness of how questions should be answered etc.

Part 2

THE SEX INDUSTRY LEGAL KIT FOR SERVICE PROVIDERS + REGULATORS

<http://www.swop.org.au/resources/silk-part2.html>

Regulating the Sex Industry

Changes in the Disorderly Houses Act in 1995 and other laws mean that the sex industry can now operate in a legal environment

This means there are rights for workers and clients and new responsibilities for owners of sex industry businesses. A range of government departments and local councils now share responsibility for assisting the sex industry to identify and comply with the new laws. These departments can enforce laws regardless of whether the business is 'legal' (has council planning permission) or not.

Sex industry workers, business owners and support staff have rights when dealing with these regulatory authorities.

Who is involved in regulating the sex industry in NSW?

Government departments and local authorities with direct responsibility for regulating the sex industry are listed below, some of the areas they are responsible for are also listed:

1. Local Councils are responsible for:

- * developing and administering planning policies for local sex industry
- * accepting, advertising and deciding on development applications from sex industry businesses
- * administering food and health policies

2. WorkCover NSW is responsible for:

- * health and safety of sex industry workers, support staff and clients
- * workers compensation (insurance) and injury management

3. NSW Police Service is responsible for:

- * where street sex workers solicit and work
- * massage premises used as brothels
- * advertising for brothels and for massage services

- * sex work and 'indecent' stripping on licensed premises
- * prosecuting employers of underage sex workers
- * people 'living off the earnings' of street sex workers

4. Department of Health is responsible for:

- * safe health practices in the workplace
- * unsafe sex practices and public health complaints
- * sex workers working with a sexually transmissible condition & their employers

5.1 Department of Industrial Relations and Unions is responsible for:

- * enforcement minimum conditions of employment as identified in awards and laws
- * unfair dismissal, unpaid wages & fines, unreturned workers bonds
- * video surveillance in the workplace

6. Australian Taxation Office is responsible for:

- * payment of personal and company tax and associated documentation

7. Australian Federal Police are responsible for:

- * assisting Immigration, Tax and Centrelink staff investigations

8. Department of Immigration is responsible for:

- * sex worker's working visa status for non-Australian citizens

9. Anti-Discrimination Board is responsible for:

- * discrimination against workers on the basis of or because of a relatives or associate's sex (including pregnancy), race, marital status, age, lesbian or gay sexuality, transgender status and intellectual and physical disability, discrimination
- * sexual, racial or homosexual vilification

All of these departments have specific powers to investigate and may respond differently to complaints made against a brothel or a worker. In some areas local council, Department of Health, WorkCover staff and the police may share responsibility for investigating complaints about the sex industry. As with any other business, laws concerning tax, industrial relations, occupational health and safety, workers compensation, criminal law, licensing, anti-discrimination and

public health are also relevant to brothels. If your business does not comply with these laws, you may face fines or legal action from government departments. Local councils have the major role in regulating brothels.

WorkCover and the Department of Health also have policies promoting workplace health and safety. For details of your rights and obligations see sections on Councils, WorkCover, Department of Health, Police, Department of Industrial Relations, Tax, Federal Police, Immigration, Anti-Discrimination in Regulators section.

What are my rights with government departments?

The sex industry has legal rights when dealing with government departments and regulatory authorities although they vary with each authority. Corrupt activity, intimidation and extortion by the representatives or staff of departments is improper behaviour and is not acceptable within a 'legalised'. and professional sex industry.

Changes in the law give local councils the major responsibility for regulating the sex industry. Councils (also known as local government) are responsible for regulating businesses in their local area. All sex industry businesses, including brothels, massage services, private workers and B+D services may need to apply to council for permission (Development Application or DA) to operate the business. Businesses which may not see themselves as part of the sex industry can be included in council's brothel regulation policies. Councils focus on the type of business using the premises, its impact on the local community, the building, its location and the health and safety of staff. Local councils can also regulate street sex work through anti-loitering laws.

Who works in the council?

Councils consist of council staff (eg. town planners - who write policies and assess DA's) and elected councillors (eg. mayor - who make final decisions about 'brothel planning policies' and development applications).

What are 'brothel planning policies'?

Brothel planning policies are a set of rules which councils use to regulate the business activities of all of the local sex industry (not just brothels). Some councils use existing planning policies, others have developed new 'stand alone' policies. Council planning policies usually identify the:

- * types of sex industry businesses covered by the policy
- * where they can be established (eg commercial or industrial zones)
- * building and health and safety regulations, and
- * if it is required, how to get council permission to operate

Copies of planning policies relevant to sex industry businesses should be available, sometimes at a small cost, from the planning department of the local council. The policies may be specific to the sex industry - Brothels Planning Policy. - or be the same as for other commercial businesses. Council planning staff should provide advice about the policy over the phone or by appointment.

How do I find out if my business is effected by the council brothel planning policy?

It depends upon what the council planning policy says about your type of business. You can begin to find out by talking directly to council staff and by reading the relevant planning policies. Remember that any information given to council could be used as evidence against the business. Further information can be obtained from SWOP including the contact details of experienced private town planners and lawyers.

Most council brothel planning policies do not recognise the different types of sex industry businesses and consider private sex worker.s premises, brothels, escort agencies and massage parlours as the same type of business. The policies usually restrict brothels to only Industrial zones and sometimes to Commercial zones. Most councils exclude the sex industry from operating in Residential zones.

How do I get council approval for my business?

Most councils require the owner of an existing or proposed business to successfully lodge a development application (DA).

DA's require the:

- * description of the type of business seeking council approval
- * details of the businesses size, opening hours, parking arrangements, signs etc
- * name of the company/individual applying for permission. property owners consent shown by their signature on the DA
- * accompanying plans and description of impact of business on local area

Council have to advertise the DA in the local press and call for public comment.

Some councils and local residents actively oppose the approval of the existing and planned sex industry businesses. In some areas existing businesses which have lodged DA.s with councils have been ordered to shut down on the information provided in the DA! Sex industry business owners can appeal against decisions made by councils by taking their case to the Land and Environment Court. A person thinking about setting up a new brothel or an owner of an existing brothel

should seek advice from SWOP and/or a qualified and experienced planner or lawyer before informing council of their plans.

Is the information that is given to council kept confidential?

No. Council will publicly display the DA and seek public comment. Council staff may request a criminal record check of the applicant from the police without the knowledge of the applicant.

What happens if a business is operating without council approval?

If a sex industry business does not have approval from the local council then the council can request that the business lodge a DA and stop operating until the DA is assessed. If the business already has council approval but is operating outside the conditions of approval then council can request the owner to take action to fix the problem or face further action including the withdrawal of approval. Council action can include inspections, verbal and written requests to change business practices and legal action.

What do council staff investigate?

As part of a routine visit, or more commonly to investigate complaints, council workers may visit the business and may focus on the following questions:

- * Is there a business being run from the premises?
- * Does this business require approval to operate?
- * Does the business have approval, or if it already has approval, is it operating within that approval?

What are my rights with council staff?

Stay calm and exercise your rights. Remember owning a brothel and being a sex worker is not illegal!

When council staff come to the workplace they:

- * should have some identification including a photo ID and a business card
- * should be at a reasonable hour in the daytime or when the business is in progress
- * should tell you why they are there and what they want to know
- * cannot arrest you nor force you to answer questions that you don't want to answer
- * can ask you questions, can take photos, make measurements or other action to collect information

Council can also use private law firms who may employ private investigators to assist them in collecting evidence. Private investigators do not have to identify themselves to the sex industry workers or owners.

Can council staff come onto the workplace / residence?

Council staff must have and produce on request any written authority from council to enter the premises if requested by the owner.

The written authority must state:

- * the name of the council worker to whom it is issued
- * the type of power that is given to the council worker
- * the date (if any) in which it expires
- * the kind of premises to which the power extends
- * and have the signature of council's General Manager

Council staff must have given the owner written notice (detailing the day for the visit and given to you at least a day before the visit) of their intentions to inspect the premises. They can enter without written notice if you give them permission to enter, or they believe there is a serious risk to health or safety on the premises.

Can council and police staff come onto the workplace if it is also my residence?

Council staff's powers of entry and inspection are not exercisable in any part of the premises used for residential purposes except with the permission of the occupier of the residence (tenant/owner) or to inspect work being carried out with council approval or with a search warrant. Police may accompany council workers with warrants and can assist them to do their job.

Complaints against council staff

If you are unhappy with the behaviour of council staff you can complain to the general manager of the Council. If this is not effective and you consider the matter is serious contact SWOP, the NSW Ombudsman and/or ICAC for further information.

How can SWOP help in matters involving councils?

SWOP can assist you by:

- * providing confidential and detailed information about council policies and procedures
- * providing resources to assist workers and owners in identifying their rights
- * refer you to private town planners and lawyers for further advice and representation

2. WORKCOVER NSW

WorkCover NSW is responsible for making sure that people working in the sex industry follow health and safety laws in all sex industry workplaces. WorkCover assists in promoting the health and safety of all sex workers, staff and visitors in every sex industry business. WorkCover can periodically monitor businesses compliance with this legislation by sending inspectors to the workplace. (See Industrial Relations section for employment issues)

The following information was compiled from a range of sources, including the joint WorkCover and Department of Health publication Health and Safety Guidelines for Brothels in NSW 1997, and WorkCover's Workers Compensation for Contractors and Sub-contractors.

How do you distinguish between an 'employee' and a 'contractor'?

There are several factors that need to be considered to distinguish an employee from a contractor. No single factor is regarded as decisive and it is ultimately up to the courts to decide what a person's employment status is. An employee is more likely to:

- * Be subject to direction from the employer about the work to be performed and the time and the manner in which it is performed
- * Be required to actually carry out the work
- * Be paid on a time basis
- * Have tools and equipment supplied by the employer
- * Work exclusively for a single employer
- * Be subject to PAYE tax arrangements (employer collects tax & issues a group certificate)

A contractor is more likely to:

- * Be engaged to carry out a particular task, using his or her own skill and judgement
- * Employ others, delegate or sub-let work to another
- * Be paid on the basis of a quotation for the job
- * Supply his or her own tools and materials
- * Carry on an independent business in his or her name or under a business or firm name
- * Be subject to PPS tax arrangements (contractor pays their own tax)

It is not always necessary to decide whether a person is an 'employee' or a 'contractor'. In borderline cases, it is likely that the person, even if a 'contractor', would be deemed to be a worker for workers compensation purposes, under the

law, which are described in the next section. The status of a person for 'tax purposes'. bears no direct relationship to that person's status as a 'worker' or 'deemed worker' for workers compensation purposes.

Under what circumstances is a contractor 'deemed to be a worker'?

A 'deemed worker' is a contractor who is considered an employee for workers compensation insurance purposes due to the nature of their employment relationship. The law provides that where a person (the contractor) makes a contract to perform any work where:

- * the value of work exceeds \$10, and
- * the contractor does not employ workers, and
- * the contractor does not sub-let part or all of the contracted work, and
- * the work is not part of a business or trade regularly carried on by the contractor in his/her own name or under a business or firm name,

then the contractor is deemed to be a worker employed by the person or company (the principal) who made the contract with the contractor. Consequently the 'principal' must ensure that workplace is safe and without risk to health the contractor must obtain workers compensation insurance.

A contractor would not be deemed to be a worker if any of the following apply:

- * The contractor employs any workers in relation to the contract, or
- * The contractor sub-lets all or part of the contracted work, or
- * The contractor, who may be a sole trader, can be demonstrated to be carrying on an independent business in their own or a company name and probably,
- * The contract of work is made between the principal and the contractors company

What are the responsibilities of my manager/employer under WorkCover laws?
All employers must ensure the health, safety and welfare of their employees and other people in the workplace or they can be in breach of laws regulated by WorkCover, some of which are listed below:

Employers must protect the health of worker by:

- * providing safe sex equipment free to an employee, including storage and disposal of safe sex equipment
- * providing training to workers and information to clients which promotes safe sex practices
- * maintaining hygiene by changing and laundering bed linen and providing towels for staff and each client

- * ensuring the cleaning and disinfecting of equipment used such as sex aids (dildos, whips etc).
- * providing for safe disposal of contaminated human waste materials (used condoms, needles, swabs)

Employers must protect the safety of workers by:

- * providing security systems such as screening clients on arrival and 'panic' buttons in rooms
- * maintaining a workplace with safe entrances and exits for workers
- * providing workers compensation insurance for a workplace based injury and illness
- * reporting serious accidents or injury at work
- * providing training for staff in health and safety procedures
- * providing injury management program for injured workers

Employers that do not protect the health and safety of workers, contractors, clients and visitors to the workplace can face legal action.

What are my responsibilities as an employee?

Employees must also take reasonable care for the health and safety of everyone at the workplace and cooperate with workplace policies and procedures which are developed to promote health and safety.

What happens if WorkCover staff come to a sex industry workplace?

Stay calm and exercise your rights. Remember sex work is legal! WorkCover inspectors have the right to enter any workplace in NSW. They should carry photo identification and a badge and produce it on demand. They should tell you why they are there and what they are investigating, unless it will compromise their investigation. Not assisting WorkCover inspectors with their investigation can incur a fine.

What happens if my business operates outside WorkCover regulations?

Failure to comply with WorkCover regulations can incur large fines and possible legal action. WorkCover staff can issue:

- * improvement notices which require action to rectify a particular problem within a particular period of time
- * prohibition notices requiring a particular activity to stop until an immediate risk to health or safety is removed or legal action may be taken.
- * penalty notices which are on the spot fines up to \$500 for minor infringements.

Failure to comply with penalty notices can lead to further fines and legal action by WorkCover. These breaches may also lead to separate action by the local council.

What is the difference between public liability and workers compensation insurance?

Public liability insurance covers a business owner's legal liability for compensation if someone who is not an employee or a family member (third party) suffers injury, damage to property, or death as a result of their business operations. Workers compensation insurance covers an employer's liability for compensation if an employee or contractor suffers injury or illness and where work is a substantial contributing factor to that injury or illness.

Who needs a workers compensation insurance policy?

Anybody who operates a business and employs workers and/or engages contractors must obtain a workers compensation insurance policy. All employers have a legal liability to pay compensation to workers who are injured in the course of their work, and employers are required by law to hold a current workers compensation insurance policy from a licensed WorkCover insurer. Employers and contractors who do not maintain an insurance policy may face action by WorkCover to recover double the premium that would have been payable and a court may impose a penalty of up to \$22,000. Employers should also have an injury management program for injured workers and must display a summary of the Workers Compensation Act 1987 in the workplace. NB. You can contact WorkCover for a list of approved NSW workers compensation insurers.

What happens if a worker or a client is injured in the workplace?

If a worker contracts an illness or disease or sustains an injury because of their employment, they should inform the employer as soon as possible, preferably by completing a 'Notice of Injury' form that must be made available by the employer. If a worker suffers a work-related injury or illness that needs medical attention a doctor should be consulted, even if time off work is not required. The employer who may be liable for compensation must forward the claim form to their workers compensation insurer within seven days, who must process the claim within twenty-one days. If a worker feels that the claim form has not been forwarded within seven days, they can forward the claim themselves. A client who contracts an illness or disease or sustains an injury as a result of their use of the service may also seek compensation.

Who is a worker for workers compensation insurance purposes?

The Workers Compensation Act 1987 defines a 'worker' to be: any person who works under a contract of service or apprenticeship with an employer ... whether the contract is expressed or implied, or is oral or in writing ... The Act also includes some types of people who are not generally considered to be employees.

This includes contractors who, even though they may not technically be employees, are deemed to be workers for the purposes of workers compensation. They are entitled to workers compensation benefits if injured, and the person or company who engages their services is obliged to provide workers compensation insurance just as they would for a direct employee. This may have relevance in many businesses in the sex industry who consider their workers to be contractors. A business that engages contractors that are 'deemed to be workers' is considered to be an 'employer' even if the business has no direct employees.

As a 'contractor' how do I negotiate my conditions?

Contractors are only entitled to conditions that are in their contract (verbal or written), so it is important to reach an agreement before starting work. This will decrease the chance for conflict arising over rights and responsibilities. Contracts can include conditions such as pay (how much and when), on call rates, confidentiality, provisions for refunds of bonds and safety practices.

What should be declared as 'wages' for contractors who are 'deemed' workers?

If an owner engages contractors who are deemed to be workers, amounts paid to those contractors must be declared as wages on wage declaration forms submitted to the WorkCover insurer. Employers must declare the total amount of the contract payment. The total amount will be reduced by the insurer to allow for costs incurred by the contractor in performing the contract. WorkCover can assist with standard percentages to assist in these calculations and can assist if any dispute arises.

Why is a policy required if there are workers or 'deemed workers'?

Any person or company which operates a business and engages contractors should obtain and maintain a workers compensation policy. Even if the business does not employ 'employees', and the contractors engaged appear not to be 'deemed to be workers' according to the criteria, above, the business still has potential workers compensation liability. A contractor, or a contractors worker may be found by the court to be a worker, and the employer of the contractor would be liable to pay compensation. In the situation where a business does not engage workers or 'deemed' workers, only a minimum premium policy is required rather than arranging separate policies for both.

What are the penalties for uninsured employers or workers?

Employers (or workers or 'deemed' workers) who do not maintain a current workers compensation insurance policy may be held liable for:

- * a fine of up to \$22,000
- * twice the amount of premium not paid for any period where a policy of insurance was not held by the employer

- * the cost of any claims for which the employer has no insurance

If in any doubt it is in your interest to obtain an appropriate policy of insurance.

What records must be kept for employees and 'deemed workers'?

Records must be kept of all payments to workers and to contractors who are 'deemed' workers. These records include wages, cash books, accounts, and any other record of a payment to a worker or a 'deemed' worker.

How can SWOP help in matters involving WorkCover?

SWOP can assist sex industry business owners to:

- * identify potential hazards within the workplace
- * develop safer work practices and procedures
- * provide information insurance advisers and other professionals for further advice
- * provide training and resource material

3. NSW DEPARTMENT OF HEALTH

The Department of Health (DOH) staff promote safe health practices in the workplace for all sex workers, staff and clients in all sex industry workplaces in NSW (including businesses with and without council approval). Their primary role is promoting healthy and safe work practices and standards for the sex industry. A secondary role is the monitoring and investigation of public health complaints against sex industry businesses and sex workers.

What are the different types of DOH Services?

Different types of health services include:

Community Health Centres These provide a wide range of health education and counselling services to the general community.

Sexual Health Centres They provide a wide range of sexual health services to the general community.

Sexual health workers may join SWOP outreach workers on visits to the sex industry. **Public Health Units** Public health unit staff are responsible for dealing with public health complaints about sex workers and sex industry businesses.

Who can make a complaint against a sex industry business or a sex worker?

Anyone, including sex workers, owners, clients and the general public can make a complaint to the Department of Health. Complaints can be made about the work practices of brothels and/or sex workers.

What happens if the DOH receives a complaint about a sex worker or a brothel? DOH staff assess complaints and may decide to investigate health matters further, or refer the matter to another authority such as a local council or WorkCover. If they receive a complaint, DOH staff focus on the practices of the worker or the owner, for instance:

- * Has there been promotion and education of workers and clients about safe sex practices and sexual health?
- * Is there a supply of free safe sex equipment and the correct cleaning and disinfecting of work tools?
- * Is there provision and safe storage of clean linen and towels?
- * Is there safe disposal of waste materials such as used condoms and needles?
- * Is there a worker who has a sexually transmissible medical infection and has sex with a client without their informed consent?

The good news is, DOH staff try to solve any problems by talking to the owner/workers first and identifying solutions (including training and safe practices) that do not involve penalties.

What happens if DOH staff come to a sex industry workplace? Remember to stay calm and exercise your rights. Don't forget sex work is legal! DOH Inspectors should carry photo identification and produce it on demand and will normally tell you why they are there, and what they are investigating, unless it will compromise their investigation. They can't enter a premises without your permission and they cannot arrest you.

What happens if a worker or a business does not comply with DOH regulations and orders?

Sex workers who fail to comply with health regulations can face action by the DOH. The Public Health Act states that it is an offence for any person with a sexually transmissible condition, including sex workers and clients, to have sexual intercourse with another person without first informing the other person about the risk of infection and the other person accepting that risk.

If you fail to comply with health regulations, you can incur large fines, possible legal action as well as separate action by WorkCover and local councils. DOH staff have the power to issue a Public Health Order (PHO) against a person (sex worker, or client) who has a sexually transmissible medical infection (including HIV and STD's) and is behaving in a way that may endanger others' health. The PHO must be confirmed by a court and can order you to restrain from specific conduct (to stop working), to undergo treatment (eg counselling to change your behaviours and HIV test without your consent) and detain you or greatly restrict

your movements. If an owner knows you have such a condition, and allows you to work without letting client's know of your condition, they can also incur a fine.

How can SWOP help in matters involving the Department of Health?

SWOP can assist owners to:

- * help workers and owners to develop and implement safe work practices
- * discuss strategies for negotiating with the Department of Health
- * providing training and resources for workers and management in safe practices

4. NSW POLICE SERVICE

Since 1996 the police's role in regulating the sex industry in NSW has changed.

The NSW Police Service now enforce laws about:

- * Where street sex workers solicit and work and people living off their earnings
- * The advertising and use of massage premises as sex industry businesses
- * Soliciting, sex work and 'indecent' stripping on licensed premises
- * The licensing of security guards and their employers
- * Investigating any criminal offence including harassment and sexual assault
- * The age of sex workers (they must be at least 18 years old)

The police cannot arrest someone for being a sex worker. The police no longer have the power to close a brothel simply because it is a business providing a sexual service.

What is the role of Police Sex Worker Liaison Officers (PSWLO)?

PSWLO's have been established in selected police regions to assist sex workers in their dealing's with the police service. Sometimes they may have a conflict between the roles of protection and law enforcement, however ideally they are caring and co-operative and can assist you with:

- * outstanding warrants
- * harassment by partners, clients, employers or other workers
- * sexual assault
- * contacting other police and any other business you may have with the police

Strategies for dealing with police

Stay calm and exercise your rights. Remember sex work is legal! The police should have an identification badge and a photo-ID and can only enter the premises with your consent, unless they have a warrant or if they believe that a crime is being committed. Undercover police officers do not have to identify themselves if asked directly by a sex worker.

What is the difference between answering police questions and making a statement?

If the police are asking you questions as part of a general inquiry then responding in a calm and polite manner is the best approach, if there is nothing to be lost by co-operating (but remember, anything you say can be used in evidence against you!)

Never swear at the police as you are likely to be charged with offensive language. If the police believe they have enough information to charge you they have to give you an official warning and may ask you to make a statement. You do not have to answer their questions and can request that your lawyer is present. If you are being arrested you should ask them why. You are entitled to know what offence you are being charged with.

Do I have to make a statement?

You are not required to make a statement to the police. Any suggestion from the police that making a statement will make things easier for you should be ignored. The court alone will determine what will happen. As a general rule you do not have to answer questions (except in motor traffic cases). The police and the courts can't assume that you are saying something by being silent. Police may tell you that things will go easier for you at court if you have co-operated with them by making a statement. This is not true.

As a general rule you should not say or write anything about any offence without having first spoken to your solicitor. In many cases admissions (that you may have written or spoken about) are used as the only evidence to successfully convict people.

Remember, if you admit to a crime and plead guilty, no other evidence is required by the courts. Don't change your mind about being silent. If you don't want to say anything to the police, make that clear and don't change your mind. State your name and address.