

Sex work in NSW

SWOP: Legal Facts Sheet

No. 1: An introduction for sex industry workers

1. Is sex work legal in NSW?

Yes. Sex work, running a sex industry business and being a sex worker are all legal in NSW—but only if they are done according to NSW laws and regulations.

'Brothels' or sex services premises are regulated by local councils, just like other businesses. Street sex work is lawful as long as it is not near or within view of a dwelling, school, church or hospital. (A dwelling is any home or residence not attached to a shop or commercial premises).

2. What is the legal age for a sex worker?

The legal age for a sex worker is 18. Anyone over 18 may provide sexual services to a person over the age of consent in exchange for money, goods or favours. It is a serious crime to employ a person under 18 as a sex worker.

3. What is the legal age for the client?

Clients must be over 16. But someone under 18 cannot enter a sex services premises or 'brothel'. SWOP recommends that, for their own protection, sex workers should be cautious and only accept clients who are 18 or older.

4. Soliciting—what is it and when is it legal?

Soliciting involves actively approaching or offering a sexual service to someone for payment. In massage parlours, simply offering your services as a sex worker may be soliciting. Street soliciting is only illegal if it is more 'active'.

It is an offence to solicit in, near or within view of a:

- church
- school

or

- hospital.

It is an offence to solicit near or within view of a:

- dwelling—any home or residence not attached to a shop or commercial premises.

It is also an offence to solicit in a:

- business claiming to be a non-sexual massage service.

You cannot solicit someone in a manner that harasses or distresses them. 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 whether soliciting took place.

5. What is a brothel or sex services premises?

In NSW, the law defines a brothel (sex services premises) very broadly. They are premises that:

- are used for prostitution (sex work), or
- have been used for prostitution and are likely to be used for it again, or
- have been advertised or represented as being used for prostitution, and are likely to be used for prostitution.

If sexual services are advertised or available in a premises, it is legally defined as a brothel—no matter what the business is set up for, and even if the premises is only used by one sex worker.

So a brothel may include:

- a full service parlour
- one-worker premises—for example, where one person may be working from home
- massage parlours offering services such as hand relief, oral sex and body slides



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

In NSW, the law says that prostitution or sex work is sexual intercourse with another person, or masturbation of another person, using any part of the body or an object—for payment. Masturbation includes hand jobs and body slides.

Many of the legal definitions of a sexual service are not clear and are open to the interpretation of local council staff, the courts and police. Nude massage and other erotic services may be defined as a sexual service by the police, council workers or courts.

REMEMBER: if sexual services are available in a workplace, the premises can legally be defined as a brothel.

7. What is the definition of sexual intercourse?

Sexual intercourse is defined as putting any part of the body or an object into another person's vagina or anus—except where it is done as part of a proper medical procedure. An object could include toys such as dildos or vibrators.

Oral sex—the stimulation of the penis or vagina using the mouth—is also considered sexual intercourse.

8. Can you advertise sexual or adult services?

It is an offence in NSW for anyone to advertise sexual services, a sex industry business or sex worker employment opportunities—but these laws are rarely enforced.

Newspapers have made their own rules about what can be said in adult services advertisements. Some newspapers do not accept sex industry advertisements, while others only accept discreet advertisements for adult services. Some may require a development

consent number to be included in advertisements.

9. Who is responsible for the health and safety of clients in a workplace?

Everyone is responsible for the health and safety of clients in a workplace! The owners/employers have a responsibility to ensure the safety and health of staff, clients and visitors to a sex services premises. They must:

- have a current workers compensation insurance policy
- provide for the safe use, handling, storage and cleaning of equipment such as sex toys
- provide adequate information, training and supervision for all staff, especially trainees
- provide and maintain safe systems of work such as security systems, and personal protective equipment such as condoms and lubricant.

Workers are also responsible for the health and safety of other staff, clients and anyone in the workplace. They must cooperate with workplace health and safety policies and practices.

WorkCover has produced guidelines for occupational health and safety in brothels. These are available from SWOP in a variety of languages. Phone: (02) 9319 4866 for more information, or visit our website: swop.org.au.

For more information on your legal rights and responsibilities, grab a copy of SWOP's Sex Industry Legal Kit (currently available only in English).

You can download a copy from:

swop.org.au

or

phone (02) 9319 4866 | 1800 622 902 (free call) and speak to a SWOP staff member.

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