

A summary of the Brothels Legislation Amendment Act 2007

The Brothels Legislation Amendment Act 2007 gives local councils more power to identify and close down unauthorised and “illegal” brothels, and to close down approved or legal premises where there are amenity complaints. You can read the Act at:

www.legislation.nsw.gov.au.

Background

Sex services premises have been decriminalised, and have been able to operate like any other legitimate business in NSW for 12 years. There are sex services premises of one form or another in every local government area in NSW. The industry is regulated by local councils (planning and location controls, environmental health), WorkCover NSW (occupational health and safety) and NSW Health (public health).

Sex services premises include:

- Commercial sex services premises (brothels)
- Massage parlours providing sex services, such as hand relief
- Home based sex work premises and private workers

A local council’s Local Environment Plan (LEP) is the planning policy which defines land uses and regulates options for a sex services premises to be:

- Development that does not need consent and is “legal” as exempt or complying development; or
- Development that needs consent and can be approved (“legal”) in that zone and location; or
- Development that is prohibited, therefore “illegal” as the use is not permissible in the zone and location so can not be authorised or considered to be complying development.

SWOP provides services to around 850 sex services premises across NSW. Due, in part, to the lack of appropriate local council planning policies, less than 15% (125)* of these premises have gained development consent. Many authorised brothels were initially refused consent by council, and had to go through a costly appeal at the Land and Environment Court. This has acted as a disincentive to other operators. Most premises remain unauthorised or illegal, because the majority of councils have not adopted reasonable planning controls. (For more information see Unfinished Business at www.swop.org.au and the Sex Services Premises Planning Guidelines available from NSW Department of Planning or www.scarletalliance.org.au)

* Information provided by the Adult Business Association.

Summary of the new laws

It is important to note that the brothel closure order and utilities order laws don’t apply to places with one sex worker. An individual sex worker in a premise (rented or home), will not be impacted by the brothel closure orders. These premises can, however, still be closed by the “normal” and slower process of council orders if they are unauthorised or illegal, or if they cause amenity impacts and complaints are made. In this case, the new circumstantial evidence rules, s 124 AB (5) and (6), apply to all proceedings in relation to sex services premises of any size or type.

The new laws give local councils more power to identify and shut down unauthorised and “illegal” brothels, except where there is only one sex worker working at the premise. They also widen the scope for amenity based complaints to be made against authorised or legal premises. You can read the Act and the debate recorded in Hansard at: www.legislation.nsw.gov.au.

The Brothels Legislation Amendment Act 2007 amends two pieces of law which are then cross-referenced.

The Restricted Premises Act, 1943 (RP Act), (formerly called the Disorderly Houses Amendment Act 1995), is amended at Schedule 2 as follows:

- **the definition of a brothel includes premises advertised as providing sex services (prostitution)**
- **one amenity complaint may be sufficient to trigger an Order, except for places where only one sex worker works;**
- **a definition of related sex services is provided;**
- **an order to suspend or vary the operation of development consent (a DA) for up to 6 months is enabled; and**
- **a wider range of persons are able to make an amenity complaint.**

The definition of a brothel now includes premises which have been expressly or implicitly advertised or represented as being used for the purposes of prostitution. Advertising may be signage, in or on the premises, newspapers, directories, or the internet or other means.

Local councils may make an application for an order if one or more amenity complaints are made by persons who work, or use facilities in the vicinity, or their children use facilities in the vicinity

Related sex uses can be specifically disallowed after the Land and Environment Court has ordered a brothel to cease operating. Related sex uses is defined to mean sexual acts or sexual services in exchange for payment, or massage (other than therapeutic massage) or adult entertainment involving nudity, indecent acts or sexual activity in exchange for payment, or if provided with other goods or services. This law prevents a business ceasing the brothel use, but transforming into a related unauthorised use.



The Environmental Planning and Assessment Act 1979 (EP&A Act) is amended at Schedule 1 as follows:

- **powers are provided enabling brothel closure orders**
- **brothel closure orders are created, and are able to be served on a range of people, including the owner of the premises, operator or persons involved in managing a brothel**
- **the definition of a brothel is expanded to include premises advertised as providing sex services (prostitution)**
- **a new definition of related sex uses is introduced**
- **These orders can be used against unauthorised or “illegal” sex services premises, but specifically are NOT to be used where there is only one sex worker.**

Schedule 1 of the Act relates to the powers available to councils under the EP&A Act, and enables special brothel closure orders.

The definition of a brothel is expanded to include premises that have been advertised, or represented to be used for prostitution, and are likely to be used for the purposes of prostitution again.

Due to the revised definition in this amendment, a brothel closure order can not be made on a premise with only one sex worker or person. Under this amendment the definition of a brothel is stated to mean “a brothel within the meaning of the Restricted Premises Act 1943, other than premises used or likely to be used for the purposes of prostitution by no more than one prostitute”. This changed definition was a result of advocacy by sex worker representatives, including Scarlet Alliance and SWOP, in order to protect individual sex workers from the extraordinary powers contained in the brothel closure orders.

An order can close a brothel, and also disallow related sex uses following the closure for up to 6 months. Orders commence in not less than 5 working days.

A brothel closure order can also be used to close legal premises, including those with Development Consent, where the premise has been the subject of an amenity-based complaint, and where the council is satisfied the complaint is warranted.

Under the Restricted Premises Act, orders for ceasing the use, or suspending or varying the consent on a DA can be made for a maximum of 6 months

Under the RP Act, brothels with more than 1 worker, including massage parlours, or premises where sex services

are advertised to be available or provided, may be closed after one amenity complaint, or if found to be unauthorised or illegal.

Under the RP Act, local councils may issue an order if one or more complaints are made by persons who work, or use facilities in the vicinity, or their children use facilities in the vicinity.

Council authorities and other regulatory authorities authorised by the Minister for Planning can issue an order.

Brothels closure orders can be given without Natural Justice requirements, so there is no notice period required for a proposed order, and no opportunity to defend oneself against the reasons for closure before the order is issued. Any defence can only be made through an appeal at Court after the order has been given, and lodged within the 5 working days before the order commences.

Although development applications (DAs) can be made, adjournment of a closure order can not be made, once an order is issued, except in exceptional circumstances.

Orders can be made against a person in control or managing, or assisting in managing a brothel. If a person fails to comply with a brothel closure order, it is an offence (thus re-criminalising the sex industry), and a second offence is more serious (“aggravated”) and may be considered in sentencing.

Failure to comply with a brothels closure order may trigger further enforcement by creating a utilities order directing a water, gas, or electricity provider to cease providing services. Local Courts or the Land and Environment Court can make a utilities order if a brothel closure order is not complied with. A utilities order can only last 3 months. Utilities orders are not to be made on residential premises.

The court may rely on circumstantial evidence of the use as a brothel, not direct evidence. Evidence includes advertising of sex related or prostitution services. For examples of circumstantial evidence of the use as a brothel see: www.legislation.nsw.gov.au, Restricted Premises Act 1943, Section 17A

If you require more information about working in the NSW sex industry, or operating a sex industry business in NSW please call the Sex Workers Outreach Project (SWOP) on Tel: (02) 9319 4866 or email to: infoswop@acon.org.au

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