

INQUIRY INTO THE REGULATION OF BROTHELS

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Massage & sex work

SWOP: Legal Facts Sheet

No. 2: Legal information for massage work

1. When is a massage business defined as a 'brothel'?

Any premises that provides a sexual service is legally considered to be a brothel. The law is clear that—even if it advertises and/or pretends to be a massage service, sauna bath, steam bath, photo studio, facility for physical exercise, or health studio—if the business provides a sexual service, it is legally considered a brothel.

2. When is a massage worker providing a sexual service?

If a massage worker provides body slides, hand relief, oral sex, or sexual intercourse the courts say they are providing a sexual service. Nude massage and other services can also be defined as a sexual service by the police, council workers and courts.

DO NOT FORGET: Under the NSW definition of a brothel, massage premises, where body slides, hand relief, oral sex or full sex services are available, will be treated as a brothel by the local council. If they do not have approval to operate as sex services premises, the premises may be investigated and closed.

3. What control do councils have over massage businesses?

Massage services have to comply with local council regulations. Operators may need to lodge a development application (DA) with local council to seek permission to run the business

Councils make a distinction between therapeutic massage and sexual services. Massage services with development consent usually find that the conditions state prostitution or sexual services are not to be provided.

Councils can take action to close down massage businesses that do not have council approval or are acting outside approval—such as providing sexual services in breach of DA conditions.

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) 9206 2166 | 1800 622 902 (free call)
and speak to a SWOP staff member.



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Notes

SWOP: *Legal Facts Sheet*

No. 2: *Legal information for massage work*

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SEX WORK and MASSAGE

Final Report 2001

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Executive Summary

Sex industry businesses who offer their services using the term 'massage' represent a significant proportion of the sex industry in NSW. This study is the first to research the effect of the NSW Summary Offences Act (16-18) on these businesses and their workers.

Massage establishments who also provide sexual services are defined as 'brothels' under the law. However, research has shown that some business operators, workers and clients do not identify themselves as being involved in the sex industry. This is due to ignorance, denial or fear that their business will be threatened by local authorities. As a result they can be suspicious or unaware of sex worker support services which provide relevant legal and health related information. To counter these problems, the SWAM project has developed an information resource that specifically targets both massage business operators and workers.

The current, NSW laws that regulate the advertising of massage services do not provide certainty or clarity for the consumer or the service provider. Therapeutic massage service providers have been consulted regarding this problem of ambiguous advertising. They report that some consumers have difficulty identifying which establishments offer therapeutic services and which offer sexual services, due to the ambiguity of the word "massage" and the misrepresentations of some establishments providing sexual services.

The SWAM project has established a consultative process which aims to identify the needs of massage industry stakeholders, including therapeutic practitioners, sex industry business operators and workers and regulatory bodies. They have contributed to the development of an educational resource and the drafting of recommendations to assist industries to advertise their services fairly and honestly, in accordance with the Fair Trading Act (Section 44).

Community Consultation: Stakeholders

Sex Industry

Sex industry bodies that have been invited to participate in the consultation include:

- Sex workers
- Sex industry business operators
- Sex Workers Outreach Project (SWOP)

Therapeutic Massage Associations

The therapeutic massage bodies that have been invited to participate in the consultation:

- Australian Traditional Medicine Society
- Association of Massage Therapists (AMT)
- Association of Remedial Masseurs (ARM)
- Nature Care College of Natural Therapies
- Massage Australia
- School of Therapeutic Massage
- Australasian College of Natural Therapies

Other Organisations

Other organisations that have been invited to participate include:

- The Australian Consumer Association
- The Department of Fair Trading

Sex Industry Advertising in NSW

Relevant NSW Laws

The Summary Offences Act 18 states that a person shall not, in any manner:
publish, or cause to be published an advertisement; or
(b) erect or cause to be erected any sign,
indicating that any premises are used or are available for use, or that person is
available, for the purposes of prostitution.

In addition, the Summary Offences Act 18 (1) states that a person shall not, in any manner publish, or cause to be published an advertisement for a prostitute.

The definition section of the Summary Offences Act 1988 in s. 3(1) defines "prostitution" as:
sexual intercourse defined in 61A of the Crimes Act 1900; and
masturbation committed by one person on another, for payment.

61A of the Crimes Act 1900 defines "sexual intercourse" as:
sexual connection occasioned by the penetration to any extent of the genitalia
(including a surgically constructed vagina) of a female person or the anus
of any person by:

- any part of the body of another person; or
- any object manipulated by another person,
- except where the penetration is carried out for proper medical purposes;
or
- sexual connection occasioned by the introduction of any part of the penis
of a person into the mouth of another person; or
- cunnilingus; or
- the continuation of sexual intercourse as defined in paragraph (a), (b) or
(c).

The Department of Fair Trading however, can take action against any business found to have false and misleading advertising.

The Fair Trading Act 1987 - Sect 46 (Misleading Conduct in Relation to Employment) states " a person shall not, in relation to employment that is to be, or may be, offered by the person or by another person, engage in conduct that is liable to mislead persons seeking the employment as to the availability, nature, terms or conditions of, or any other matter relating to, the employment ".

These opposing directives currently put any sex industry business especially the massage sector, in a vulnerable position.

Types of advertising

The sex industry advertises their services in a number of ways. These include advertisements in newspapers, magazines and telephone directories; discrete signs; 'list of services'; business cards, and on TV, radio and the internet. It is unclear if the description on of the services given over the phone and at the workplace is included in the definition of 'advertising'. It is also unclear if advertising on the Internet is covered by NSW law

Newspaper practices

In recent years, newspapers and other forms of media have heralded their own distinction between therapeutic and sexual massage by creating an Adult Services section. Some now request proof of accreditation if a business is trying to advertise in the 'massage' section to keep the two industries completely separate. The Yellow Pages 2000 directory inserted for the first time a disclaimer after the heading 'Massage Therapy' which states "The intent of this heading is for the promotion of massages of a therapeutic, medical or sports injury related nature. It is not for the promotion of products or services of an "adult" nature..."

While these changes have certainly been of a positive nature, there is no uniform policy in NSW in regards to advertisements from the sex industry. Some newspapers do not accept ads from businesses, which offer a sexual service; others only accept discreet advertisements, while some allow them to be more explicit. In addition, each newspaper and media service controls their advertising rates and can charge at a higher rate than for other types of business advertisements as there are, as yet, no anti-discrimination laws in place to cover 'occupation, trade or calling'.

The Consultative Process

Nine massage business operators and 24 workers in the Parramatta local government area were surveyed over a three-week period in November 2000. The Parramatta area was chosen due to its diversity and representative nature. For example, Parramatta has a high proportion of owner/operators and workers of non-English speaking background (NESB). In addition, a low proportion of massage owner/operators in Parramatta have submitted a brothel development application (DA) for their business. The survey took the form of an anonymous questionnaire. Survey questions assessed participants knowledge of laws that currently regulate the massage sector of the sex industry, contact with council and police, the premises' development consent status, terms used to advertise the business and/or staff (sex workers), as well as basic demographic questions.

Seven Therapeutic Massage Associations were contacted by way of written correspondence and follow up phone calls. All were invited to comment upon the current practices of advertising for both the therapeutic AND sexual massage businesses, and how that might impact upon the therapist's work. The SWAM project also welcomed any suggestions towards future recommendations for the demarcation and allocation of words and terms to be used by each of the two service providers.

Issues Identified - from the Sex Industry

- Knowledge of the laws regulating to the Massage sector of the Industry is extremely low or non-existent. Not one person surveyed knew about the Summary Offence Act 18. In addition, there was a significant lack of understanding and/or compliance with other relevant laws, including: Disorderly Houses' (Amendment) Act, Environmental Planning and Assessment Act, Occupational Health and Safety Act, Workplace Injury Management, Public Health Act, Crimes Act, Industrial Relations Act, Fair Trading Act. Workers are placed at risk as these businesses often do not provide safe sex equivalent, nor educate workers in sexual health issues, checking clients, report STD's and referrals to sexual health clinics.
- Owners, workers and clients often do not perceive "massage services" as "sexual services" or "prostitution" ('sex' is identified as intercourse only, not ANY sexual service - as defined by the law). This is compounded by council members informing establishments that their business is OK as long as there's "no sex".

- Most massage establishments identify as either a Massage Parlour or a Relaxation Centre and advertise their services in a different way to those who identify as a Brothel. This includes using very specific words that identify their services as "massage services" and not "full service".

Councils which develop and enforce planning policies which hinder sex industry businesses from gaining Brothel development consent, force sex industry business to operate as massage businesses (with or without development consent).

As a consequence, there is a strong belief from owners and workers that a Massage DA indicates that the establishment is absolutely legal and approved by council.

The lack of continuity by council with recommending and approving both Massage and Brothel Development Applications is an ongoing, and sometimes costly, issue (especially when establishments are forced to take their DA submissions to the Land and Environment Court for approval).

- corruption within local council is a very real and ongoing issue.
- most workers have very little knowledge of the correct DA status of their work place.

NESB owner s/opera tors have generally been involved in the sex industry for approximately 5 years or less and are the least knowledgeable about the law in general.

While it is well established that there are a considerable number of NESS owners and workers in the sex industry, there is not one council who have got translated information or policies available to assist in the adherence of laws, policies and procedures in their council area.

- contact with the police was criminal and of a positive context.
- contact with council had increased in the 8-9 months before the consultative process, reflecting the increased focus on the industry leading up to the revised addition of the Parramatta Local Council LEP and DCP.

Issues identified - from the Therapeutic Massage Sector :

The need for definitive words and terms to be allocated to each service provider so that members of the public are clearly able to distinguish between the two. The Association of Massage Therapists (N.S.W.) Ltd; Association of Remedial Masseurs Inc and the Australian Traditional Medicine Society Ltd were all very supportive of further discussion around this issue. (See Appendix 2)

The associations were also supportive of the changes that had been made in areas of the media, especially the Yellow Pages, where a disclaimer had been inserted at the top of the Massage section.

Recommendations.

Repeal Summary Offence Act 16.

Workers in ANY workplace generally have no knowledge of the business's correct council consent. as that is the responsibility of the owner. As prostitution is a legal occupation it is unjust that a worker who is carrying out the duties they were employed to do, could be charged because of this outdated law.

Repeal Summary Offence Act 17.

It is no longer illegal to own or operate a brothel, since the Disorderly House Amendment Act 1995. Therefore, operating a business which provides goods or services that have not been approved by council is now a planning matter NOT a criminal one. There is, already in place, correct legislation for businesses who operate in such a manner and as a legal occupation - the Sex industry should be treated and dealt with the same way as any other business.

Repeal Summary Offence Act 18.

As a legal occupation, the Sex Industry should be allowed to pursue a high standard of service provision in an honest and direct manner (in accordance with the Department of Fair Trading). To repeal this law would make way for further discussion and consultation with both the Sex Industry and the Therapeutic Massage Therapist Associations around advertising and common usage of words. It would also assist the Sex Industry to gain equal rights in advertising, as the illegal nature of such has meant that the media has been able to charge exorbitant prices for ads while charging other professions a lot less.

Development of a Terminology Guideline

for both the Therapeutic Massage Therapists and the Sex Industry in regards to advertising and the demarcation of common words and terms used at present.

Language-Specific Documentation Concerning the Sex Industry.

A directive to be made for all councils to provide language-specific documentation concerning the Sex Industry. This should include the translation of the SWAM resource. Consultation with SWOP and other Service providers to the Industry would assist in identifying which languages translation are needed.

The Establishment of a Sex Industry Liaison Officer in Councils

The establishment of a Sex Industry Liaison Officer (SILO) in councils. People are extremely wary with approaching council for information concerning the Sex Industry. To have one trained person to deal with all inquiries will assist the council in giving accurate, consistent information and recommendations without moralistic judgment, as well as decreasing the possibility of corruption to occur within council. South Sydney Council is the only council, to this time, to show a pragmatic approach to the Sex Industry with the creation of a SILO position.

Training of all Council Planning Staff

Concise training to be designed for all councils planning staff about sex industry laws. This should also include educational material and/ or a presentation from SWOP regarding the diversity of the Sex Industry and the needs and sensitivities of each sector. South Sydney Council is the only council at present to acknowledge that diversity of the Sex Industry in their planning policy

The funding of a permanent position at SWOP

The funding of a permanent position at SWOP devoted entirely to the needs of the Massage sector. While the Sex Industry is inclusive of sexual massage, a lot of the current resources are not accessed or utilized by this population. This is often due to workers and owners not identifying as Sex Industry participants ("if they want a whore they can go next door to the brothel" - overhead conversation in a massage parlour) and the use of different terminology in their workplace. The fear of prosecution by police and councils often leads to management banning condoms and literature to be stored on the premises. This lack of education around laws and regulations makes Massage workers and their clients especially vulnerable to Occupational Health and Safety standards not being met.

The creation of Massage - specific health resources

While the SWAM project has created a legally based resource, which has already proved to be invaluable for the industry, often the only way SWOP and other Outreach workers have been allowed access to Massage businesses and their workers is by offering health education. Massage specific resources are not comprehensive at all, with most 'prostitute' or 'brothel' focused - not using the terminology that this sector is comfortable with. Once again, due to the lack of identity with the Sex Industry, health concerns are largely dismissed. Client's aren't checked for STD's and knowledge of what to look for is low.

Anti-Discrimination Laws

The SWAM project also recommends that anti-discrimination laws are put in place for "occupation, trade or calling". The Sex Industry cannot be expected, as a legal occupation, to abide by all laws and legislations set out by this society and YET, at the same time, still not have the same rights to being treated equally. This is seen, post clearly with advertisement costs, credit card application, rental applications and rent prices. To have this law put in place will assist in eliminating some of the corruption that is still happening in and to the Sex Industry today.

Outcomes from the SWAM Project

The Sex Work and Massage Resource.

New and stronger ties forged with the Massage sector of the Sex Industry.

Since starting the SWAM project at least 10 owners, or prospective owners, have asked for assistance and been willing to liaise with the SWAM project worker on numerous occasions. Not all of these people had accessed SWOP before, with some being referred directly to the SWAM project by other service providers. There have also been numerous other requests for information from the general sex worker population around advertising laws, and contact with the Massage worker population has increased too.

Increased knowledge of the laws currently affecting the Massage Industry

In both SWOP staff and other Outreach workers in the Sydney Metropolitan region. This has occurred through in-house informal training with the SWAM worker and a presentation at two Sexual Health Outreach Workers' meetings, in November 2000 and October 2001.

Increased council contact - with Parramatta and Burwood councils - with the opportunity to comment on draft Local Environment Plans and draft Development Control Plans

Supplementary Submission
to
the NSW Parliamentary Inquiry into the Regulation of Brothels
from Sex Workers Outreach Project Inc.

Sex Services Premises that Identify as “Massage Parlours”

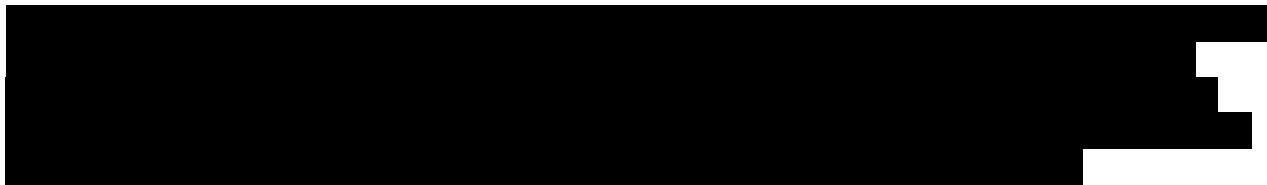


Range of SWOP printed resources for sex workers and sex work premises with the Massage and Sex Work Resource in English in the centre of the picture and the resource reproduced in Thai, Mandarin and Korean on the left of the picture. Copies of this resource (in English) are attached

1) Sex Service Premises that Advertise as “Massage Parlours”

SWOP is aware that for a number of reasons some sex services premises (SSPs) choose to name themselves and/or advertise themselves as “massage parlours”. This practice is so common that “massage parlour” has entered the vernacular as a synonym for “brothel”.

In the early 2000’s SWOP commissioned a report on Sex Work and Massage (a copy of which is included in this information pack).



2) SWOP and “Massage Parlours”

a) Outreach to “Massage Parlours” by SWOP

SWOP attends all premises in NSW where we believe that sexual services may be being offered. We identify these premises mainly through their advertising which is the same way that their clients identify them. We also use intelligence that we gather from other sources such as other sex workers, online forums and sexual health clinics to identify where sexual services may be being offered.

SWOP does not make any distinction between SSPs that may have correct planning approval from their local council and those that may not. In the majority of cases our staff would be unaware of a premises planning status when performing an outreach visit.

b) SWOP’s Position on the Legal Status of “Massage Parlours”

SWOP is unequivocal in advising premises that where sexual services are provided that those premises may be defined as a brothel, irrespective of what terminology that premises uses to describe itself. This may also include premises where only one sex worker may be conducting business.

SWOP also advises that the legal definition of “sexual services” includes services such as “erotic massage” or “massage with relief” (massage with masturbation of the client or massage with fellatio performed on the client). SWOP is also clear that there is nothing that delineates these types of services from “full service sex” (service involving penetrative intercourse) and that the provision of any of these services by a sex worker constitutes prostitution. SWOP also lets operators know that when “sexual services” are performed on premises then that premises is defined as a brothel.

SWOP has a Legal Kit available for download on its website that deals with these matters in detail. Important sections of this booklet have been converted into a series of Fact Sheets (available in four languages), the most pertinent of which is titled “Massage and Sex Work” and copies of which are included in this information pack. These resources were developed for SWOP by the Law and Justice Foundation.

SWOP accepts a wide and conservative definition of brothel that derives from case law in the information and resources we distribute.

3) Recommendations

SWOP reiterates its recommendation that local councils need further support to effectively undertake their role in regulating appropriate zoning, planning and location controls.

SWOP recommends that consideration be given to making SSPs (brothels) an allowable use in all 2B Mixed Commercial Zones in all LEP’s. Furthermore, SWOP advises streamlining the processing of development applications by compulsory delegation of all planning decisions with regard to SSPs to council planners only.

SWOP also recommends that the Recommendations of the Sex and Massage Report as follows be adopted:

- The repeal of sections 16, 17 and 18 of the Summary Offenses Act
- The development of terminology guidelines to delineate therapeutic massage services from erotic and sexual services
- A directive to be made for all councils to provide language-specific documentation concerning the Sex Industry
- That all councils have a trained Sex Industry Liaison Officer on their planning staff.

Kind regards

[REDACTED]

Cameron Cox
Chief Executive Officer
Sex Workers Outreach Project Inc.

Attachments;

Sex Work and Massage Report
Fact Sheet Sex Work and Massage
