

Closing down 'brothels'

SWOP: Legal Facts Sheet

No. 6: Closing down sex services premises or 'brothels'

1. Closing down sex services premises or 'brothels'

Local councils can close down sex services premises if they negatively affect the local area or breach council planning policies. Councils can apply to the courts to close down premises if a complaint has been made against the business—for example, about disturbances.

2. What a brothel closure order is

A 'brothel closure order' is an order made by the Land and Environment Court that:

- premises not be used as sex services premises
- the owner or occupier not use the premises for 'related sex uses' or
- for a maximum of six months after the order is made, any DA concerning the use of the premises as a sex industry business or for 'related sex uses' may be suspended or altered (regardless of whether the owner/occupier has changed).

'Related sex uses' means:

- sexual acts or services for payment
- massage services for payment—other than 'genuine' remedial/therapeutic massages
- adult entertainment—involving nudity, indecent acts or sexual activity—for payment or for other goods or services.

If authorised by the Minister for Planning, council authorities and other authorities can also issue a

brothel closure order. These laws were put in place to ensure that once a sex industry business is closed, the same business cannot crop up in a slightly different form.

3. Sex services premises that can be given a brothel closure order

The Land and Environment Court can grant a brothel closure order on any premises used as a sex industry business **with more than one sex worker**. So, if the premises has only one sex worker—such as home occupation or private sex worker premises—they cannot be given a brothel closure order.

But premises with one sex worker can still be closed by council orders if they are unauthorised, or if they cause complaints or negatively affect the neighbourhood. Council orders are a slower process than a brothel closure order.

4. Proof that premises are being used to provide sex services

To prove in court that any premises are being used to provide sex services, a council does not need direct evidence. It can rely on purely 'circumstantial evidence'—such as advertisements for sexual services, the way the furniture is arranged, or observation of the gender balance of people that come and go from the premises.

But the existence of condoms and other safe sex equipment does not necessarily prove that premises



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are used for sex work—there needs to be other evidence as well.

5. When the council can apply for a brothel closure order

The council can apply to the Land and Environment Court for a brothel closure order if it has received one or more complaints about the business. The complaint must have been made by:

- residents who live in the area
- people who work in the area or
- people who themselves or whose children regularly use facilities in the area.

6. What the Court considers before making a brothel closure order

Before ordering sex services premises be closed, the Land and Environment Court considers whether:

- the premises are near a church, hospital, school or any place regularly attended by children
- the business causes a disturbance in the neighbourhood relative to what other businesses are doing and the hours they operate
- there is enough off-street parking (if appropriate)
- there is suitable access to the business
- the business causes a disturbance in the neighbourhood because of its size and the

number of people working in it

- the premises interfere with the appeal of the neighbourhood
- there are any other matters it should consider.

7. What the Court considers before suspending or altering development consent

Before suspending or altering development consent concerning sex services premises or 'related sex uses', the Land and Environment Court considers:

- the likelihood that the premises will continue to be used as sex services premises or for related sex uses
- the effect of the sex uses on the appeal of the neighbourhood
- the permitted use for the land
- any other matter that it considers relevant.

8. Court procedure and your rights

A court can make a brothel closure order without observing 'natural justice'. So, for example, no one needs to notify you that a closure order has been proposed and you won't be given an opportunity to defend yourself before an order is issued. You can only object to the order by appealing to the Land and Environment Court after the closure order has been given. You need to appeal within 28 working days after the order has been formally given to you (served).

When the Court makes a brothel closure order, it must inform you of the reasons for the order and give you information about your appeal rights.

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The Court does not often adjourn proceedings regarding a brothel closure order just because you intend to lodge (or have already lodged) a DA. An adjournment will only be granted in exceptional circumstances and will only be made once. If there is an adjournment, you need to lodge a DA within 10 days.

REMEMBER: *The police may enforce other laws such as underage sex workers or clients, alcohol licensing, illicit drug dealing, or other criminal laws.*

9. Enforcement of brothel closure orders

A closure order may be given to anyone controlling or managing the business. Not obeying the order is an offence and not obeying an order a second time may mean a tougher sentence.

Not obeying a brothel closure order may trigger a utilities order. This means that water, gas or electricity to the premises may be cut. A utilities order can only last three months and cannot be made on residential premises.

If you are charged with not obeying a brothel closure order, your defence can include that you have taken all reasonable steps to prevent the use of the premises for sex work, or, if you are the owner, that you have taken all reasonable steps to evict the people responsible for using the premises for sex work.

10. Police cannot close down a brothel or sex services premises themselves

The NSW Police do not have the power to close a sex industry business. But they can notify the local council who may act to close the business if it is not authorised for sex services.

11. Workers and contractors cannot be charged if a brothel or sex services premises does not comply with council regulations

Local councils focus on compliance with planning laws and will take action against the 'users' of the land for not complying with council regulations—that is the tenant, owner, or operator—and not the workers or contractors who work there.

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.

Notes

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