

Council Investigations

SWOP: Legal Facts Sheet

No. 5: Information about Local Councils

1. What council staff investigate

Either as part of a routine visit, or to investigate complaints, council workers may visit a sex services premises. They will probably focus on these questions:

- Is there a business being run from the premises?
- What is the nature of the business—for example, are sexual services provided?
- Does this business need approval to operate?
- Does the business have approval? Or, if it already has approval, is it operating within that approval?

2. Your rights with council staff

Stay calm when council staff come to your workplace. Remember owning or working in a brothel and being a sex worker are not illegal. When council staff come to your workplace they:

- must have given the owner or occupier written notice—subject to the exceptions listed below under '3. Notice of council's intention to visit'
- should carry some identification, including photo ID and a business card
- should arrive 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
- should enable the business operator to attend if possible
- can ask you questions, take photos of the building or facilities, make measurements or take other action to collect information
- cannot arrest you nor force you to answer

questions that you do not want to answer.

3. Notice of council's intention to visit

Council staff must give the owner or occupier written notice of their intentions to inspect the premises, detailing the day for the visit and giving at least a day's notice before the visit.

But council staff can enter without giving written notice if:

- you give them permission to enter
- they believe there is a serious health or safety risk on the premises
- entry is required urgently and the council's general manager has authorised entry without notice in writing.

NOTE: *If council staff have a search warrant they do not have to give the owner or operator advanced written notice that they intend to visit.*

4. Council use of search warrants

Council staff may get permission to enter and search premises for evidence that a DA and other council laws and standards are being disobeyed. This permission is called a 'search warrant'. They can only apply for a search warrant if they have good reason to believe rules are being disobeyed. Council staff must issue notice of the warrant—called an 'occupiers notice'—when they enter, but they can delay doing so if they have a good reason. An occupier's notice must include:



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- the name of the person who applied for the warrant
- the date and time when the warrant was issued
- the address or other description of the premises
- a summary of the powers that are given by the warrant.

Police may accompany council workers with search warrants and can help them to do their job.

5. Permission for council staff to enter your workplace

Council staff must produce written permission from the council to enter the workplace if the owner or occupier asks them to. The permission must include the:

- name of the council worker to whom it is issued
- type of power that is given to the council worker
- date (if any) on which it expires
- kind of premises covered by the power
- signature of the council's general manager.

6. Workplaces that are also private residences

Council staff cannot enter any part of premises used only for residential purposes—unless you give them permission or they have a search warrant. This applies whether you own or rent the premises. But council

staff can enter your private residence to inspect work being carried out under a DA, such as an extension to a house.

7. Council can use private investigators

Council can use private investigators to help them collect evidence. Private investigators do not have to identify themselves to sex industry workers or owners, even if asked directly.

8. Complaints against council staff

If you are unhappy with how council staff behave you can complain to the general manager of the council. If this is not effective, contact these organisations for more information:

- SWOP
- the NSW Ombudsman or
- the Independent Commission Against Corruption (ICAC).

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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