

AUSTRALIAN CAPITAL TERRITORY

OCCUPATIONAL HEALTH AND SAFETY ACT 1989

APPROVAL OF A CODE OF PRACTICE

INSTRUMENT NO. 259 OF 1998

Pursuant to subsection 87(1) of the *Occupational Health and Safety Act 1989*, (the Act)
I approve the code of practice entitled "ACT Sex Industry Code of Practice" for the
purposes specified in subsection 87(1) of the *Act*.

Dated this eighth day of December 1998

BRENDAN MICHAEL SMYTH
MINISTER FOR URBAN SERVICES

OCCUPATIONAL HEALTH
AND
SAFETY ACT 1989

CODE OF PRACTICE

FOR

THE ACT SEX INDUSTRY



ACT WorkCover

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Foreword

ACT Occupational Health and Safety Act 1989

The ACT *Occupational Health and Safety Act 1989* (the Act) provides for the means of developing, administering, and enforcing occupational health and safety standards in the ACT, with emphasis on prevention.

The ACT Occupational Health and Safety Council has the function of developing occupational health and safety standards and recommending them to the Minister for Urban Services who is responsible for implementing them and ensuring their enforcement under the Act.

The primary duty imposed on employers is to take all reasonably practicable steps to protect the health, safety and welfare of employees at work (section 27 of the Act). This includes providing and maintaining, so far as is reasonably practicable, a working environment that is safe for employees and without risks to their health.

Employees have a duty to act responsibly and perform their work in accordance with safety standards applied by their employer or relevant Codes of Practice. They are expected to take reasonable care to protect the health and safety of themselves and others (section 30 of the Act).

A duty is also imposed on employers in relation to the health and safety of third parties who are not employees (section 28 of the Act). This means that employers and operators have obligations under the Act to clients and sex workers who are not employees, for example, to ensure that they are not exposed to risk to their health or safety arising from the conduct of the employer.

The Act also provides that a person who is, to any extent, in control of a workplace shall take all reasonably practicable steps to ensure that it is safe and without risk to health (section 29 of the Act).

It should also be noted that employers have other legislative responsibilities which are not covered in this Code of Practice, including those under the *Prostitution Act 1992*, the *Workers Compensation Act 1951* and the *Public Health Act 1997*.

Codes of Practice

The Act provides for the making of Codes of Practice for the purpose of giving practical guidance, on specific areas of work, to employers and employees and self-employed

people. Codes of Practice are approved by the responsible Minister under section 87 of the Act.

Codes of Practice are designed to be used in conjunction with the Act and associated regulations, but do not have the same legal force.

A Code of Practice may be used as evidence in legal proceedings to show that a person has failed to meet a standard set out in the Act or a regulation, unless that person can establish that their alternate method provides equivalent or better standards of safety.

An inspector appointed under the Act may cite a relevant Code of Practice when issuing an improvement or prohibition notice. Failure to comply with an improvement or prohibition notice is an offence.

This Code of Practice was developed by the Attorney-General's Department in close consultation with the Sex Industry Consultative Group. This Group is a non-statutory body which provides advice to the Attorney-General on matters relating to the sexual services industry in the ACT. The Group's membership includes representatives of sex workers and brothel operators, as well as members from community health and law enforcement areas.

1. INTRODUCTION

1.1 Title

This Code of Practice shall be cited as the Occupational Health and Safety Code of Practice for the Sexual Services Industry in the ACT.

1.2 Authority

This Code of Practice, approved pursuant to section 87 of the ACT *Occupational Health and Safety Act 1989*, (“the Act”) shall have effect from the 8th of January 1999

1.3 Purpose

The purpose of this Code of Practice is to provide practical guidance to employers and operators and workers and sex workers in the Sexual Services Industry in the ACT about meeting appropriate occupational health and safety standards.

2. DEFINITIONS AND INTERPRETATIONS

In this Code of Practice:

“brothel” means premises used or to be used by more than one sex worker for the purpose of providing commercial sexual services, but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs pursuant to an arrangement initiated elsewhere;

“client” means a person who gives monetary or material reward in exchange for sexual services;

“commercial sexual services” means sexual services provided for monetary or material reward (irrespective of whether the reward is, or is to be, paid or given to the sex worker or another person);

“employee” means a person employed by the employer under a contract of service. A contract of service may be written or oral or partly written and partly oral. (This would include any person who works in connection with a brothel including sex workers, receptionists, drivers and cleaners);

“employer” means a person who employs a person under a contract of service. A contract of service may be written or oral or partly written and partly oral;

“escort agency” means a business of arranging commercial sexual services, being a business carried on at premises other than a brothel;

“operator” in relation to a brothel or escort agency, includes the owner and the person in day-to-day control of the brothel or escort agency;

“prophylactic” means a condom or other device that is adequate to prevent the transmission of a sexually transmitted disease. (This would include condoms, dams and latex gloves.)

“sex worker” means a worker in a brothel or escort agency who personally provides commercial sexual services;

“sexual services” means:

- the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person, or by an object carried out by another person;
- oral sex;
- the masturbation of one person by another; or
- any activity which involves the use of one person by another for his or her sexual gratification;

“spa bath” means a domestic type bath fitted with a water recirculation system and/or an air injection system. A water heater may be incorporated in the system, but a water filter is not required;

“spa pool” means a pool or other water retaining structure with a capacity of holding 680 litres or more of water, fitted with a water recirculatory system and/or an air injection system, equipment that is capable of heating any water contained in it, and a water filter.

“worker” includes a person who is an employee, a person who is an independent contractor and a person who performs unpaid work in a brothel or escort agency.

3. CLEANLINESS

Brothels should be kept in a clean condition at all times. Cleaners should be fully informed of the contents of this Code of Practice and should be provided with protective apparel. Spot cleaning should be carried out as soon as possible. Particular attention should be paid to the areas set out below.

3.1. Linen

The employer and/or operator should provide for the use of individual clients and sex workers:

- clean bed linen or clean bed covers; and
- clean towels.

All bedding (e.g. pillows, mattresses, blankets) should be kept in a sanitary condition.

All linen, including towelling, which comes into contact with clients should be changed immediately after use.

The following steps will assist in minimising health risks associated with linen:

- at least two separate and appropriately labelled receptacles should be provided in the laundry for the separate storage of clean linen and used linen;
- any soil should be removed prior to washing (e.g. rinsing vomit off sheets);
- linen should be washed in warm water using laundry detergent; and
- all items of linen should be thoroughly dried after washing.

3.2 Food Preparation Areas

If food is provided to clients in a brothel, all requirements of the *Food Act 1992* should be met.

The potential to contaminate food, and therefore cause illness, is always present in any area where food is prepared or stored. The following simple precautions will minimise any risks associated with food-borne illness:

- before handling any food or food utensils, make sure you wash your hands thoroughly particularly after using the toilet or handling condoms;
- make sure that all perishable items like milk, meat and dairy foods are refrigerated at 4 degrees Celsius or below;
- make sure that all food utensils are thoroughly cleaned in warm soapy water and rinsed in hot water and allowed to air dry; and
- make sure that food contact surfaces like counters and benches are cleaned regularly using hot water and soap.

3.3 Disinfection of Spas

Employers and/or operators should ensure that strict standards are maintained in relation to spas. Spa pools provide a higher infection risk than swimming pools because their warm, turbulent, aerated water is ideal for the rapid growth of many organisms, including Legionnaires' Disease. It is recommended that spas be maintained, treated and operated in accordance with Appendix B (Chemical Operators Parameter) and Appendix C (Recommended Procedures for Operators of Public Spa Pools) of Australian Standard 2601.1 - 1993.

Any spa pool should be designed and constructed in accordance with the relevant Australian Standard (AS 2601.1 - 1993, Spa Pools Part 1: Public Spas).

Water quality tests shall be done on every spa pool before it is opened each day, and every three hours when the spa is in use to ensure the water is suitable for bathing purposes.

The water in spa pools should be kept at an appropriately balanced chemical level. They should have a system of automatic analysis and dosage control equipment that will maintain the level of disinfectant. Spa pools should be drained, cleaned and refilled with fresh water at least once a week. Water turnover of the spa pool should be at least half hourly.

The temperature of the water in the bathing area of a spa pool should be maintained at a level between 35 - 37 degrees Celsius, with a maximum temperature of 40 degrees Celsius. It should be noted that spa pools with a temperature of 30 - 55 degrees Celsius are regarded as Warm Water Systems under the *Building Act 1972* and thus are required to be licensed to prevent outbreaks of Legionnaires' Disease. Spa pool operators of this category are required to contact ACT Health Protection Service, Applied Environmental Health Program for further information.

Spa baths should be drained after each use so they can be cleaned, disinfected with a suitable disinfectant (e.g. a solution of one part bleach to two parts water) and refilled with fresh water. Pipes should be cleaned with caustic soda on a regular basis, for example, weekly.

Any spa bath should be designed and constructed in accordance with the relevant Australian Standard (AS 3861 - 1991 - Spa Baths).

3.4 Sex Toys

Sex toys can be a source of infection transmission between sexual partners. They can also be the cause of spreading an infection from one part of an individual's body to another part of the same individual's body (e.g. from anus to vagina). It should be noted that the cleaning methods outlined below are not guaranteed to eliminate the presence of HIV or Hepatitis A, B or C, but following these procedures will significantly lower the risk of transmission of these and other diseases.

Equipment which cannot be thoroughly cleaned (e.g. leather) should only be used on intact skin.

Cleaning and disinfection should be compatible with any relevant manufacturers' instructions and any additional requirements under this Code.

Any equipment used in the provision of commercial sexual services (other than condoms), such as a sex toy, which has had contact with another person's body should be cleaned and disinfected after every use.

A condom should be used on all equipment used for penetration of any bodily orifice or rubbing on the outside of the genital or anal area. A new condom should be used:
for each new partner;

when toys are used to penetrate a different bodily part (e.g. vaginal penetration changes to anal penetration) and;
for each new piece of equipment.
The condom should be removed and discarded after each use, and the equipment then cleaned and then disinfected.

Cleaning should be done using detergent and water. To disinfect after cleaning, equipment should be rinsed and immersed for 10 minutes in a solution of one part bleach to two parts water. After immersion the equipment should be rinsed and dried prior to use.

Equipment which will not tolerate immersion (for example, vibrators) should be cleaned by wiping with detergent and water and then disinfected by wiping with 70% alcohol, and allowed to dry prior to use.

Leather equipment, such as whips, should be washed with hot soapy water and dried in the sun, then disinfected with 70% alcohol and not used until they are dry.

Corroded equipment should not be used.

For Further Information:

National Code of Practice for the Health and Safety of Health Care Workers and other People at Risk of the Transmission of Human Immunodeficiency virus and Hepatitis B in the Workplace [NOHSC : 2010 (1993)]

3.5 Accidental Spills of Bodily Fluids

Special care should be taken in dealing with bodily fluids which may contain infectious organisms. This includes blood, vomit, urine, faeces and saliva. Protective gloves should be worn when dealing with these fluids. As much of the matter as possible should be removed using paper towels or tissues, which should then be put immediately in a plastic bag which is tied up and discarded. Hard surfaces should be mopped or sponged over with cold water and soap (or detergent) and then wiped with freshly prepared household bleach (i.e. household bleach freshly diluted with water to give a 1% solution - a fresh batch should be made up each time because it deteriorates on keeping). On soft surfaces (e.g. carpets, rugs) the area should be sponged thoroughly with cold water and soap, rinsed and air dried.

Strong bleach should not be used on stainless steel articles as it will corrode them. Instead, methylated spirits should be used for disinfecting by mixing a solution of seven parts methylated spirits to three parts water, leaving it on the surface for 20 minutes and then wiping it off. This solution can be made up in advance and kept in a sealed container labelled "poison".

Mops and sponges used for cleaning up bodily spills should be rinsed in bleach solution and then in plain water, and air dried.

4. DISPOSAL OF SHARPS

Sharp items can be a source of infection transmission. Sharp items include needles, razor blades, pins and knife blades.

Employers and/or operators should provide approved sharps disposal containers for the disposal of sharps by workers and clients. Needles should not be recapped, removed from disposable syringes, nor broken or bent by hand because this can cause skin punctures.

Used sharps should be placed into an Australian Standard (AS 4031) specified, disposable sharps container. Sharps should not be forcefully inserted into the container, otherwise they may puncture the hand. Containers should not be allowed to fill past the three quarter level. Once the container is full the lid should be sealed irreversibly. When locking on a push-on sharps container lid, both hands should be used to put the lid in place and pressure applied only to the edges of the lid.

When the container is three-quarters full it should be disposed of in accordance with the ACT Clinical Waste Manual (e.g., by utilising the Needle Exchange Program).

In relation to drug use in brothels, see section 13 of this Code, “Drugs and Alcohol Policy”.

For Further Information:

ACT Clinical Waste Manual (1991); and

Nation Code of Practice for Health Care Workers and Other People at Risk of Transmission of Human Immunodeficiency Virus and Hepatitis B in the Workplace [NOHSC:2010(1993)]

5. AMENITIES

5.1 Showers, baths and toilets

There should be adequate sanitary facilities provided, taking into account the number of sex workers, other workers and clients who use them, in compliance with the relevant provisions of the Building Code of Australia.

It is recommended that sex workers should have access to separate showers and toilets from those used by clients.

Toilets and showers should be kept clean. Regular physical cleaning with detergents and the use of hospital grade disinfectants are required to control mould problems which have the potential to harbour and spread fungi including the fungus causing tinea. The employer and/or operator should ensure that baths and showers are cleaned and disinfected after each use, preferably with a hypochlorite (i.e. bleach) based disinfectant. Particular care should be taken with damaged surfaces, e.g. chipped tiles and cracked shower screens.

Liquid soap and single use towels should be provided at all hand basins.

Non-slip mats should be provided in all wet areas.

5.2 Other facilities

Adequate facilities should be provided for sex workers and other workers including a staff room which is off limits to clients.

Employers and/or operators should provide adequate heating and cooling facilities.

6. PERSONAL PROTECTIVE EQUIPMENT (PPE)

Operators are required by the *Prostitution Act 1992* to take all reasonable steps to ensure that sex workers and clients practise safe sex. The Act provides that it is an offence to provide commercial sexual services involving vaginal, oral or anal penetration by any means unless a prophylactic is used. It is also an offence under the Act for an operator to discourage the use of prophylactics at a brothel.

Employers and/or operators should provide and maintain adequate personal protective equipment (PPE) and instruction in its use. This requires providing such items as condoms, dams, latex gloves and water-based lubricants free of charge. Condom vending machines, for example, are not adequate for meeting this requirement.

Employers and/or operators should ensure that clients are made aware of the requirement that PPE is used for any penetrative sex. One way of achieving this would be to place signs in public areas of a brothel which explain that it is a criminal offence to have sex in a brothel without a condom.

Employers and/or operators should ensure that condoms and dams are stored in a cool place, away from light and heat which may contribute to premature deterioration. Condoms, dams and gloves which are unused at their expiry date should be disposed of.

Used condoms, dams, soiled tissues and the like should be double bagged in plastic and placed in a secure waste receptacle located in the brothel and disposed of appropriately.

It is recommended that all sex workers are immunised against hepatitis A and B.

7. PERSONAL SAFETY

7.1 Brothels

There should be accessible personal safety alarms in each room and an established procedure for their use and follow-up action. Locking mechanisms on doors should not prevent or delay or a person quickly entering or exiting a room in an emergency situation.

There should be workplace policies which protect the safety of sex workers and other workers (e.g. that no worker should be alone in a brothel) and clients (e.g. if a client is behaving unacceptably he or she will not be admitted or will be asked to leave). Employers and/or operators should ensure that all sex worker and other workers are aware of workplace policies on personal safety.

Employers and/or operators should encourage sex workers and other workers to report all incidents of violence to the employer and/or operator, so that the effectiveness of the policies can be monitored.

Sex workers should have the right to refuse particular clients, or particular kinds of work (e.g. refusing to do escort work).

7.2 Escort work

Sex workers should be provided with mobile phones or personal alarms when going on outcalls.

If drivers are employed in the provision of escort services, they should comply with the *Motor Traffic Act 1936* at all times.

Drivers employed for the provision of escort services should not consume nor be under the influence of any alcohol or drugs while working.

Guidelines should be developed about what drivers should do when sex workers need assistance and all drivers should be trained regarding these guidelines.

Sex workers should receive induction and ongoing training about maximising their safety on outcalls.

8. EXAMINATION OF CLIENTS BY SEX WORKERS

It is emphasised that neither routine examination of clients nor regular medical screening of sex workers can guarantee the absence of infectious disease. There are no reliable visual signs of HIV infection and many other sexually transmitted diseases. The examination of clients should not be seen as an alternative to, or lessening the need for, observing safe sex practices.

Employers and/or operators should provide written and verbal information on the correct procedures for examining clients.

Prior to the commencement of sexual services, each client should be examined by the sex worker to detect any visible signs of sexually transmitted disease. Common signs of diseases which may be detected in this way include:

- any sores, ulcers, lumps, warts or blisters on the genitals or surrounding area;
- any evidence of ano-genital discharges;
- pubic lice or eggs;
- any signs of itching or rashes in the genital or anal area;
- cold sores on the mouth;
- jaundice.

A separate light with a 100 watt globe should be provided for such examinations. The sex worker shall not engage provide or receive commercial sexual services where the sex worker believes that there is a risk of acquiring an STD. (consistent with section 16 of the ACT Prostitution Act 1992) Any client with evidence of an STD should be advised to seek medical treatment.

16. A person shall not, at a brothel or elsewhere, provide or receive commercial sexual services if the person knows, or could reasonably be expected to know, that he or she is infected with a sexually transmittable disease Penalty: \$5,000 or imprisonment for 6 months

For Further Information:

*“WISE Sex” - available from the ACT Office of Workers in Sex Employment.
(Includes descriptions and photographs of STDs.)*

“WISE New Workers’ Kit” - available from the ACT Office of Workers in Sex Employment. (Includes information on sexual health and safety).

“National Management Guidelines for Sexually Transmissible Diseases and Genital Infections” - prepared by the Venereology Society of Victoria and endorsed by the National Venereology Council of Australia. [ISB:0646 309765].

9. EDUCATION & TRAINING FOR SEX WORKERS

If a sex worker has difficulty communicating in the English language, the employer and/or operator should provide, or arrange for the provision of, the information in a language with which he or she is familiar.

The employer and/or operator should provide such information to sex workers in the workplace about the prevention and transmission of sexually transmissible diseases (STDs) - including HIV infections and hepatitis A, B and C - as is necessary to enable them to perform their work in a manner which is safe. This information should cover safe sex practices, cleaning and disinfection of equipment, and immunisation where available.

The employer and/or operator should provide written information at the workplace for clients about the transmission of STDs, including HIV infection and hepatitis A, B and C.

The employer and/or operator should take all reasonable steps to ensure that any information about STDs provided at the workplace for the benefit of clients or sex workers is medically accurate.

The employer and/or operator should ensure that all new sex workers are fully informed of the need to use condoms, dams, gloves and water based lubricants.

It is also important that all sex workers have ongoing education regarding safe sex practices.

In order to obtain comprehensive and up to date information and to provide ongoing education and training, employers and/or operators should provide reasonable access to government and non-government agencies which provide health and education services, including outreach services for sex workers.

10. OTHER OH&S ISSUES

The employer and/or operator should provide information to sex workers and other workers about appropriate back care strategies, including appropriate manual handling techniques, occupational overuse syndrome and stress. (It should be noted that

Codes of Practice apply in the ACT in relation to manual handling and occupational overuse syndrome).

The employer and/or operator should provide information and training to sex workers and other workers on the use of equipment used in the course of their work.

Receptionists and cleaners in brothels and escort agencies should be given specialist training or education as required. For example, receptionists should receive training in how to handle difficult clients.

Employers and/or operators should ensure sex workers and other workers are aware of their rights and responsibilities under the *Occupational Health and Safety Act 1989* and this Code of Practice.

Employers and/or operators should be aware of the importance of counselling for workers involved in traumatic incidents in the course of their work. Referral to external services may be appropriate.

Employers and/or operators should have a sexual harassment policy and guidelines in place, and a copy should be given to all sex workers and other workers on commencing employment.

For Further Information:

National Code of Practice on Occupational Overuse Syndrome

[NOHSC:2013(1994)]

ACT Standard and Code of Practice on Manual Handling (2nd Revised Edition)

11. FIRST AID

Brothels, like all other businesses in the ACT, should comply with the Code of Practice "A.C.T. First Aid in the Workplace" which includes the following:

- having at least one first aid kit in the brothel which is located in a prominent and accessible position;
- ensuring that all employees are provided with practical instruction about the nature of first aid facilities provided, their location, who the first aid officers are, and the procedures to be followed when first aid is required; and
- ensuring there is at least one first aid officer where there are 20 or more employees present at the work place at the same time. A first aid officer should be trained appropriately, e.g. to the level of being awarded a "Senior First Aid Certificate" from St John Ambulance Australia or Australian Red Cross.

12. SMOKING POLICY

Brothels are required to comply with their obligations under:
the *Smoke-Free Areas (Enclosed Public Places) Act 1994*; and
the ACT Code of Practice for Smoke Free Workplaces.

The Act prohibits smoking in enclosed public places unless a certificate of exemption has been granted. Only premises licensed under the *Liquor Act 1975* and restaurants can apply for an exemption. Areas in a brothel such as reception areas and waiting rooms must be smoke free.

The ACT Code of Practice for Smoke Free Workplaces recommends that the most effective manner in which employers and operators can fulfil legal obligations to sex workers and other workers to provide a healthy and safe work environment in relation to smoking is through the implementation of a workplace non-smoking program. It provides a Model Workplace No Smoking Policy for guidance.

13. DRUG & ALCOHOL POLICY

It is recommended that if employers and/or operators establish a drug and alcohol policy, then it should be based on harm reduction principles.

The policy should set out the rules with regard to the use of drugs and alcohol within the workplace. It should be a written document developed in consultation with sex workers and other workers, and provided to each of those workers outlining:
when it is considered appropriate to consume alcohol;
the acceptable standard of work performance;
appropriate use of prescribed drugs; and
prohibition on having possession of or being under the influence of illegal substances at work.

For Further Information:

*“Drug and Alcohol Policy for the Sex Industry Workplaces in the ACT”,
available from the ACT Office of Workers in Sex Employment.*

14. EQUIPMENT

Ergonomic furniture should be provided for all workers. This could include suitable beds (e.g. those with firm, supportive mattresses which are not too heavy to lift for workers involved in cleaning), adjustable chairs for those who do office work and supportive seating in staff areas. Waterbeds should not be used in brothels.

15. FIRE SAFETY

Employers and/or operators should ensure that the workplace complies with all legislative requirements relating to fire safety, including those in the *Building Act 1992*, the *Fire Brigade Act 1957* and the specifications in the Building Code of Australia.

Employers and/or operators should ensure that all fire exits are kept clear, are easily identified, and are always capable of being opened from the inside. Fire alarms and extinguishers should be installed and all workers should receive training on the use of any fire fighting equipment provided.

Employers and/or operators should ensure that all workers are trained in evacuation procedures.

16. ELECTRICAL SAFETY

Electrical work and wiring must be performed by a licensed electrician and comply with *AS 3000 Electrical Installations - Buildings, Structures and Premises* (also known as *SAA Wiring Rules*). For further information also refer to *AS 3760, In-Service Safety - Inspection and Testing of Electrical Equipment*.

USEFUL CONTACT NUMBERS

Department of Justice & Community Safety:
Registrar of Brothels & Escort Agencies - 6207 0531
Secretariat of the Sex Industry Consultative Group - 6207 0535

Department of Health & Community Care:
Chief Health Officer - 6205 0881
Infection and Communicable Diseases Control,
Health Protection Services- 6205 2300
Applied Environmental Health Program,
Health Protection Services - 6205 1700

ACT WorkCover - 6205 0200

Australian Federal Police:
request for police attendance - 11 444
general inquiries/switchboard - 6256 7777

Emergency - Police, Ambulance and Fire Brigade - telephone 000

Needle Exchange Program - 6247 5266

Workers in Sex Employment (WISE) [offers education and outreach services for sex workers] - 6247 3443

Eros Foundation - 6285 1010

Medical Services:
Gilmore Clinic - 6244 2184
Interchange General Practice - 6247 5742
Family Planning - 6247 3077

AIDS Action Council - 6257 2855

Rape Crisis Service - 6247 2525

ACT Human Rights Office [for investigation & conciliation of complaints of discrimination or sexual harassment] - 6207 0576

First Aid:
Red Cross - 6206 6096
St Johns Ambulance - 6282 2399