

Queensland has a number of laws relating to sex work and sexual health. This fact sheet outlines those laws and what you need to do to meet your legal obligations around sexual health only. For more general information about sex work and the law see our Sex work and the law in Queensland factsheet. Further information can be located on the Prostitution Licensing Authority website.

Key legislation

There are two key pieces of legislation that regulate sexual health in the sex industry.

They are:

1. The Public Health Act 2005
2. The Prostitution¹ Act 1999 (especially Section 73)

1. The Public Health Act 2005

The Public Health Act details the responsibilities of people in relation to recklessly or deliberately infecting another person or exposing them to the risk of infection of a controlled notifiable disease (such as HIV or syphilis). These laws apply to everyone in the community and apply therefore equally to sex workers working privately, as escorts, in brothels or from beats.

Under the Public Health Act 2005 a person must not deliberately or recklessly:

- put someone else at risk of infection from a controlled notifiable disease (financial penalty or 18 months in prison)
- infect someone else with a controlled notifiable disease (financial penalty or maximum of 2 years in prison).

However, they do not commit an offence if, when the other person was put at risk of

infection from the disease or when the disease was transmitted, the other person:

- knew the person was infected with the disease, and took every precaution to prevent transmission and;
- voluntarily accepted the risk of being infected.

2. The Prostitution Act 1999

The Prostitution Act 1999 sets out a number of offences regarding the operation of licensed brothels, sex workers working in licensed brothels, public soliciting (street-based) and advertising.

The Prostitution Act 1999 and sex workers

Sex workers, must not engage in sex work at a licensed brothel whilst infective with a sexually transmissible infection. The maximum penalty is 100 penalty units (as of 15/02/12 \$10 000).

The Act however provides a defence against this charge if the sex worker has undergone a sexual health check within the past 3 months and believed they were not infective. Certificates in Queensland are issued by sexual health clinics, Family Planning Queensland clinics and GPs according to guidelines published by Queensland Health.

These health professionals should not issue a certificate if during a sexual health check they identify a sex worker has a condition that would prevent them from working. In most cases a short exclusion period might apply whilst the condition is treated, however for more serious

¹ Our preferred terminology is 'sex work'; the term 'prostitution' is used only where it is directly quoted from legislation.

conditions like HIV, the guidelines prevent a Certificate being issued. You may also be asked to return for a proof of cure before a certificate can be issued.

The Prostitution Act 1999 and licensed brothels

The licensee or approved manager of a licensed brothel must not permit a person to work as a sex worker at the brothel if they are aware that the sex worker is infective with a sexually transmitted infection.

Licensees/approved managers have the same protections under the law, so will require all their workers to produce a sexual health certificate every 3 months as evidence that they are meeting the legal requirements above. Financial penalties apply for breaking these laws.

Neither a sex worker, licensee or approved manager of a brothel can use this certificate to suggest that they/their employee is not infective with an STI. There are penalties for inducing a client to believe that the sex worker is not infective with an STI, regardless of whether the sex worker has an infection or not.

Sexual Health Certificates for people working in licensed brothels

If you work in a licensed brothel, then you must have a current sexual health certificate. This certificate is really just a certificate of attendance and states that you attended a sexual health clinic, Family Planning clinic or a doctor's surgery on a certain date.

A certificate does not include results of tests or any medical information as this remains private between the health professional and the worker. However certificates cannot be issued if the health professional considers the sex worker to be at risk of being infective with an STI,

Private workers do not need to get sexual health certificates. Only sex workers in licensed brothels need to get sexual health certificates.

The certificate can be in your working name and you will need to show the brothel manager the original, not a photocopy. The certificate has a Queensland Health recommended format and often brothels will not accept other types of certificates, letters from doctors or STI results in place of this certificate.

If you have a certificate in another format (say from an interstate doctor or clinic), it may still be valid as long as it is dated (less than 3 months ago), and states that a sexual health assessment was conducted.

While there is no legal reason why the brothel shouldn't accept other types of certificates, be aware that they can and do refuse to accept other types of certificates and that this might delay your being able to start work.

If you are planning to move from interstate to work in Queensland consider asking your sexual health service provider to go on line and use the Queensland certificate and guidelines. This will allow you to arrive in Queensland with a valid certificate.

Alternatively, state on the certificate that it was issued in accordance with the published Queensland guidelines.

This should increase the likelihood that the certificate will be accepted in Queensland. The certificate can be downloaded at:
http://www.health.qld.gov.au/sexhealth/documents/cert_of_attend.pdf

<http://www.health.qld.gov.au/sexhealth> Look under the section headed: Clinical Information, The doctor should insert their clinic logo, address and other appropriate details or print the certificate straight to their letterhead.

If a brothel manager or licensee gives you a hard time you can ask them to contact the PLA (Prostitution Licensing Authority) to discuss acceptable alternatives.

Do sexual health checks for sex workers need to be done in a particular way?

Queensland Health clinics have set guidelines for the way STI screenings occur if you identify as a sex worker and ask for a sexual health certificate.

It involves a physical exam, a urine sample and asking a series of questions (such as, have you had any condom breakages or slippages since your last check?). If it is your first visit they will draw blood as well. Bloods are usually done on every second visit, i.e. every six months.

These guidelines can be viewed at http://www.health.qld.gov.au/sexhealth/documents/cm_guidelines02.pdf

If you go to a sexual health clinic you do not have to provide your real name (unless you need a prescription for something), although it is important you provide an accurate contact phone number so they can ring you if you test positive for anything.

The clinic will not contact the brothel management directly about your certificate or health status

Who keeps the certificates and for how long?

You own the certificate, not the brothel. While you must show an original certificate, you can ask for it to be photocopied and for the original to be returned to you. Brothel owners/managers can copy the certificate and write 'original sighted' and sign the photocopy for their files.

There is no legal requirement for them to hold your original certificate. That is yours to keep. You might need it to work at another licensed brothel.

Brothels must keep the certificate, or a copy signed by the owner/manager stating that they sighted the original, for one year.

Who can demand to see your certificate?

The licensed brothel requires a current certificate from you and will keep a copy of it for their files. The Prostitution Licensing Authority (PLA) can look at these records at any time so it's a good idea to get it made out in your work name.

The PLA checks brothels annually as part of re-issuing brothel licenses to see if all workers had current certificates at the time they worked at the brothel. No one can order you to produce your certificate but the management of the licensed brothel.

Sexual intercourse or oral sex without a prophylactic (condom, dam, female condom)

Under Queensland Law, regardless of where you work, you must not provide prostitution involving sexual intercourse or oral sex unless a prophylactic is used.

A 'prophylactic' means a condom or other device like a dam or female condom (femidom) that is adequate to prevent the transmission of a sexually transmissible infection.

In a licensed brothel, you may also be asked by the licensee/manager to use a prophylactic (either a condom or glove) for hand relief. This is listed as one of the brothel license conditions but is not a legal requirement for private sex workers.

Clients must not:

- ask for or receive services without the use of a prophylactic (condom, femidom or dam)
- interfere with, break or remove a prophylactic, or;
- use, or continue to use, a prophylactic that they know is damaged

Clients can be, and have been, charged with deliberately breaking the condom!

Licensees/approved managers must:

- take reasonable steps to ensure that a person does not provide or obtain prostitution involving sexual intercourse or oral sex at the brothel unless a prophylactic is used. In a licensed brothel, this includes using a glove or condom for hand relief
- must not discourage the use of prophylactics at the brothel.

Sex workers must:

- use a prophylactic for giving or receiving vaginal, anal or oral sex.

Significant financial penalties apply for breaking these laws.

Sex workers should be aware that police can, and do, pose as clients to entrap sex workers into offering to provide sexual services without prophylactics.

Disclaimer:

All material in this fact sheet is provided for your information only and may not be construed as legal, medical or health advice or instruction.

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