

Legislative Council—No 2A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 20 June 2019

South Australia

Statutes Amendment (Decriminalisation of Sex Work) Bill 2018

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*, the *Equal Opportunity Act 1984*, the *Spent Convictions Act 2009*, the *Summary Offences Act 1953* and the *Return to Work Act 2014*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Statutes Amendment (Decriminalisation of Sex Work) Act 2018*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of section 5—Interpretation

Section 5(1), definition of *common prostitute*—delete the definition

5—Insertion of section 68AA

15 After section 68 insert:

68AA—Provision of commercial sexual services to children

- 20
- (1) A person must not provide commercial sexual services to a child.
Maximum penalty: Imprisonment for 10 years.
 - (2) However, it is a defence to a charge of an offence against this section if it is proved that the defendant believed on reasonable grounds that the person to whom they provided commercial sexual services had attained 18 years of age.

6—Insertion of section 68AB

After section 68 insert:

25

68AB—Offence to employ child for a purpose related to provision of commercial sexual services

- (1) A person who employs a child for a purpose related to the provision of commercial sexual services is guilty of an offence.
Maximum penalty: Imprisonment for 5 years.

(2) For the purposes of subsection (1), but without limiting the generality of that subsection, a person who performs any of the following services and functions will be taken to be doing so for a purpose related to the provision of commercial sexual services:

- 5 (a) acting as a receptionist, or otherwise making or receiving telephone calls or other communications, related to the provision of commercial sexual services;
- 10 (b) driving a sex worker to a place for the purpose of providing commercial sexual services (whether at that place or elsewhere);
- (c) providing cleaning services at premises at which commercial sexual services are provided;
- (d) purchasing goods (however described) intended to be used in the provision of commercial sexual services.

15 (3) It is a defence to a charge of an offence against subsection (1) for the defendant to prove that—

- (a) the defendant required the child to produce evidence of their age; and
- 20 (b) the child made a false statement, or produced false evidence, in response to that requirement; and
- (c) in consequence, the defendant reasonably believed that child was 18 years of age or older.

(4) In this section—

employs a child includes—

- 25 (a) enters into a contract for services with a child; and
- (b) allows a child to undertake work as a volunteer;

premises includes a part of a premises;

sex worker means a person who provides commercial sexual services.

30 **7—Amendment of section 270—Punishment for certain offences**

Section 270(1)(b)—delete paragraph (b)

8—Variation of Schedule 11—Abolition of certain offences

Schedule 11, clause 1—after paragraph (29) insert:

and

- 35 (30) offences relating to prostitution.

Part 3—Amendment of *Equal Opportunity Act 1984*

9—Amendment of section 5—Interpretation

Section 5(1)—after the definition of *sexuality* insert:

sex worker means a person who provides sexual services on a commercial basis;

10—Amendment of section 85T—Criteria for establishing discrimination on other grounds

(1) Section 85T(1), definition of *discriminate*—after paragraph (f) insert:

or

(g) discriminate on the ground of being, or having been, a sex worker,

(2) Section 85T—after subsection (7) insert:

(8) For the purposes of this Act, a person discriminates on the ground of being, or having been, a sex worker—

(a) if the person treats another unfavourably because the other is, or has in the past been, a sex worker; or

(b) if the person treats another unfavourably on the basis of a characteristic that appertains generally to persons who are, or who have in the past been, sex workers, or on the basis of a presumed characteristic that is generally imputed to persons who are, or who have in the past been, sex workers; or

(c) if the person treats another unfavourably because of an attribute of or a circumstance affecting a relative or associate of the other, being an attribute or circumstance described in the preceding paragraphs.

11—Amendment of section 85U—Application of Division

Section 85U—delete "or religious appearance or dress" and substitute:

, religious appearance or dress or being, or having been, a sex worker

12—Amendment of section 85ZA—Application of Division

Section 85ZA—delete "or caring responsibilities" and substitute:

, caring responsibilities or being, or having been, a sex worker

13—Amendment of section 85ZB—Discrimination by associations

Section 85ZB(2)—after paragraph (c) insert:

or

(d) for persons who are, or who have in the past been, sex workers,

14—Amendment of section 85ZD—Application of Division

Section 85ZD—delete "or religious appearance or dress" and substitute:

, religious appearance or dress or being, or having been, a sex worker

15—Amendment of section 85ZF—Discrimination by person disposing of interest in land

Section 85ZF(1)—delete "or caring responsibilities" and substitute:

, caring responsibilities or being, or having been, a sex worker

16—Amendment of section 85ZG—Discrimination in provision of goods and services

Section 85ZG(1)—delete "or caring responsibilities" and substitute:

, caring responsibilities or being, or having been, a sex worker

17—Amendment of section 85ZH—Discrimination in relation to accommodation

(1) Section 85ZH(1)—delete "or caring responsibilities" and substitute:

, caring responsibilities or being, or having been, a sex worker

(2) Section 85ZH—after subsection (5) insert:

(6) This section does not apply to discrimination on the ground of being, or having been, a sex worker in relation to the provision of accommodation by an organisation that does not seek to secure a pecuniary profit for its members, if that accommodation is provided only for persons who are, or who have in the past been, sex workers.

18—Amendment of section 85ZI—Charities

Section 85ZI(a)—after subparagraph (iv) insert:

(v) persons who are, or who have in the past been, sex workers; or

19—Amendment of section 85ZK—Measures intended to achieve equality

(1) Section 85ZK—delete "or persons with caring responsibilities" and substitute:

persons with caring responsibilities, or persons who are, or who have in the past been, sex workers

(2) Section 85ZK—delete "or persons without caring responsibilities" and substitute:

persons without caring responsibilities, or persons who are not, or who have never been, sex workers

Part 4—Amendment of *Spent Convictions Act 2009*

20—Insertion of section 16A

After section 16 insert:

16A—Certain convictions in relation to sex work taken to be spent

(1) Despite any other provision of this Act, a conviction of a person for a prescribed sex work offence will be taken to be spent on the commencement of this section (including, to avoid doubt, a conviction occurring after the commencement of this section).

(2) In this section—

prescribed sex work offence means—

- (a) an offence against section 270(1)(b) of the *Criminal Law Consolidation Act 1935*; or
- (b) an offence against section 21 of the *Summary Offences Act 1953* involving premises frequented by prostitutes; or
- (c) an offence against section 25, 25A or 26 or Part 6 of the *Summary Offences Act 1953*; or
- (d) a common law offence relating to prostitution,

(in each case, as in force before the commencement of this section).

Part 5—Amendment of *Summary Offences Act 1953*

21—Amendment of section 4—Interpretation

Section 4(1), definition of *prostitute*—delete the definition

22—Amendment of section 21—Permitting premises to be frequented by thieves etc

Section 21—delete ", prostitutes" wherever occurring

23—Insertion of section 24A

After section 24 insert:

24A—Power of police to enter premises used for commercial sexual services

(1) A police officer may, at any time of the day or night, exercise all or any of the following powers in respect of premises at which commercial sexual services are provided:

- (a) the officer may enter into, break open and search the premises if the officer has reasonable cause to suspect that—
 - (i) an offence has been recently committed, or is about to be committed; or

(ii) there is anything that may afford evidence as to the commission of an offence; or

(iii) there is anything that may be intended to be used for the purpose of committing an offence;

5 (b) the officer may break open and search any cupboards, drawers, chests, trunks, boxes, packages or other things, whether fixtures or not, in which the officer has reasonable cause to suspect that—

10 (i) there is anything that may afford evidence as to the commission of an offence; or

(ii) there is anything that may be intended to be used for the purpose of committing an offence;

(c) the officer may seize any such things to be dealt with according to law.

15 (2) In this section—

commercial sexual services means an act engaged in for payment involving physical contact (including indirect contact by means of an inanimate object) between 2 or more persons that is intended to provide sexual gratification for 1 or more of those persons, but does not include an act of a class excluded by regulation from the ambit of this definition.

24—Repeal of sections 25, 25A and 26

Sections 25, 25A and 26—delete the sections

25—Insertion of section 26AA

25 After section 26 insert:

26AA—Review of decriminalisation of sex work etc

(1) The Attorney-General must cause a review to be undertaken of the operation of—

30 (a) this Act, to the extent that it was amended by the *Statutes Amendment (Decriminalisation of Sex Work) Act 2019*; and

(b) a provision of any other Act that was amended or inserted by the *Statutes Amendment (Decriminalisation of Sex Work) Act 2019*.

35 (2) The review and the report must be completed before the third anniversary of the commencement of this section.

(3) The Attorney-General must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

26—Insertion of section 26AB

After section 26 insert:

26AB—Minister to arrange assistance for persons leaving sex work

- 5
- (1) A person who is engaged in sex work and who wishes to leave sex work may apply (without charge) to the Minister for assistance under this section to do so.
- (2) An application under this section must be made in a manner and form determined by the Minister.
- 10
- (3) On receipt of an application under this section, the Minister must cause such assistance as the Minister thinks appropriate to be offered to the applicant for the purposes of making their transition from sex work as easy as is reasonably practicable.
- (4) Without limiting the kinds of assistance that may be offered to an applicant, such assistance may include 1 or more of the following:
- 15
- (a) the provision of information about Government and other resources and services available to the applicant;
- (b) the provision of education and training services;
- (c) assistance in finding accommodation;
- 20
- (d) assistance in finding employment;
- (e) assistance in accessing legal advice and health services;
- (f) counseling and support services.
- (5) If an applicant accepts an offer of assistance, the Minister must take reasonable steps to provide such assistance, or cause such assistance to be provided, to the applicant.
- 25
- (6) However, an offer of assistance under this section does not create legally enforceable rights or entitlements.
- (7) In this section—
- Minister* means—
- 30
- (a) if the regulations prescribe a Minister for the purposes of this definition—that Minister; or
- (b) if the regulations do not prescribe a Minister for the purposes of this definition—the Attorney-General.

27—Insertion of section 26AC

35 After section 26 insert:

26AC—Prohibition on advertising commercial sexual services

- (1) A person must not advertise the provision of commercial sexual services.

Maximum penalty: \$2 500.

- (2) An owner or occupier of premises must not cause or permit a person to advertise, at or on the premises, the provision of commercial sexual services.

Maximum penalty: \$2 500.

- (3) Subsections (1) and (2) do not apply to an advertisement or other action of a kind prescribed by the regulations.

- (4) For the purposes of this section, a person *advertises the provision of commercial sexual services* if the person—

(a) places or displays a sign in, or that is visible from, a public place that promotes the provision of commercial sexual services; or

(b) distributes to the public any unsolicited leaflet, handbill or other document, that promotes the provision of commercial sexual services.

- (5) In this section—

commercial sexual service means an act engaged in for payment involving physical contact (including indirect contact by means of an inanimate object) between 2 or more persons that is intended to provide sexual gratification for 1 or more of those persons, but does not include an act of a class excluded by regulation from the ambit of this definition;

payment includes any form of consideration;

sign includes a painted or printed sign, lettering, image, signboard or visual display screen.

28—Repeal of Part 6

Part 6—delete the Part

Part 6—Amendment of *Return to Work Act 2014*

29—Amendment of section 4—Interpretation

Section 4(1), definition of *employer*, (a)—after "subsection (7)" insert:

or section 6A

30—Insertion of section 6A

After section 6 insert:

6A—Additional provisions in respect of sex work

The following provisions apply in respect of the provision of sexual services on a commercial basis (not being the provision of a service that is prohibited under a law of the State):

- (a) for the purposes of paragraph (b) of the definition of *contract of service* in section 4, the provision of such a service will be taken to be work of a prescribed class if—

- 5
- (i) the work is performed by 1 person to the contract, arrangement or understanding (the *worker*) in the course of or for the purposes of a business carried on by another person to the contract, arrangement or understanding (the *employer*); and
- (ii) the work is performed personally by the worker (whether or not the worker supplies any equipment); and
- 10 (iii) the worker does not employ any other person to carry out any part of the work;
- (b) a reference to an employer in this Act does not include a reference to—
- (i) a person to whom such services are personally provided; or
- 15 (ii) a person of a class prescribed by the regulations for the purposes of this paragraph;
- (c) in determining an application under section 175, the Corporation must not refuse to extend the protection of this Act to a self-employed person merely because the person is or has been engaged in the provision of commercial sexual services (other than where the provision of the services is prohibited under a law of the State);
- 20 (d) the regulations may exempt a specified class of persons or bodies from a specified provision of this Act.

25 **Schedule 1—Transitional provision**

1—Application of section 128(1) of *Return to Work Act 2014* to certain employers

- (1) This clause applies to an employer of a person who provides sexual services on a commercial basis.
- 30 (2) An obligation under section 128(1) of the *Return to Work Act 2014* will be taken not to apply to an employer to whom this clause applies during the prescribed period.

Note—

35 That subsection provides that an employer must not employ a worker in employment to which that Act applies unless the employer is registered by the Return to Work Corporation of South Australia.

- (3) Nothing in this clause—
- (a) limits the operation of section 128(3) of the *Return to Work Act 2014*; or
- (b) prevents—
- 40 (i) an employer to whom this clause applies from applying for registration by the Return to Work Corporation of South Australia during the prescribed period; or

- (ii) such an application being processed by the Return to Work Corporation of South Australia during the prescribed period.

(4) In this clause—

employer has the same meaning as in the *Return to Work Act 2014*;

5 *prescribed period* means the period commencing on the day on which this clause comes into operation and ending 6 months after that day.