

South Australia

Statutes Amendment (Sex Work Reform) Bill 2012

A BILL FOR

An Act to amend the *Criminal Law Consolidation Act 1935*, the *Spent Convictions Act 2009*, the *Summary Offences Act 1953* and the *Workers Rehabilitation and Compensation Act 1986*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Sex Work Reform) Act 2012*.

2—Amendment provisions

- 5 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*

3—Amendment of section 5—Interpretation

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

4—Amendment of section 270—Punishment for certain offences

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

5—Variation of Schedule 11—Abolition of certain offences

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

and

(30) offences relating to prostitution.

Part 3—Amendment of *Spent Convictions Act 2009*

6—Insertion of section 16A

After section 16 insert:

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

15 (1) Despite another 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.

(2) In this section—

prescribed sex work offence means—

20 (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

25 (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 4—Amendment of *Summary Offences Act 1953*

7—Amendment of section 4—Interpretation

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

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

Section 21—delete ", prostitutes" wherever occurring

9—Substitution of section 25—Soliciting

Section 25—delete the section and substitute:

25—Soliciting

5 (1) A person who, in a public place, or within the view or hearing of any person in a public place, accosts or solicits a person for a purpose related to the provision of sexual services on a commercial basis is guilty of an offence.

Maximum penalty: \$750

10 (2) Nothing in this section prevents a person from advertising the provision of sexual services on a commercial basis.

Note—

However, a person must still comply with any other laws that might relate to such advertising.

15 (3) For the purposes of this section, a reference to a public place does not include a reference to premises at which sexual services are provided on a commercial basis.

(4) In this section—

sexual services and the *provision of sexual services on a commercial basis* have the same meanings as in Part 6.

20 **10—Repeal of sections 25A and 26**

Sections 25A and 26—delete the sections

11—Substitution of Part 6

Part 6—delete the Part and substitute:

Part 6—Offences relating to sex work

25 **27—Interpretation**

(1) In this Part—

sexual intercourse has the same meaning as in the *Criminal Law Consolidation Act 1935*;

sexual services means—

- 30 (a) sexual intercourse; or
(b) any other activity involving direct or indirect physical contact between 2 or more persons for the purpose of the sexual gratification of 1 or more of those persons,

35 but does not include an act, or class of acts, declared by the regulations to be excluded from the ambit of this definition.

(2) For the purposes of this Part, a reference to the provision of sexual services on a commercial basis includes a reference to the provision of sexual services for any form of payment (whether monetary or otherwise).

- (3) This Part is in addition to, and does not derogate from, the *Occupational Health, Safety and Welfare Act 1986*.

Note—

5 The *Occupational Health, Safety and Welfare Act 1986* requires employers and employees to minimise risks to health and safety in the workplace.

28—Offence to request unprotected sex etc

- (1) A person must not, in connection with the provision of sexual services on a commercial basis—

- 10 (a) request that he or she, or any other person, be allowed to engage in a high risk sexual activity without using an appropriate prophylactic; or
- 15 (b) require or encourage a person to engage in a high risk sexual activity (whether with the person or otherwise) without using an appropriate prophylactic; or
- (c) prevent or discourage another person from using an appropriate prophylactic when engaging in high risk sexual activity (whether with the person or otherwise).

Maximum penalty: \$2 500.

- 20 (2) For the purposes of this section, each of the following sexual services will be taken to be a **high risk sexual activity**:

- (a) sexual intercourse;
- 25 (b) a sexual service that involves the transfer, or a risk of transfer, of bodily fluids (other than saliva) from 1 person to another;
- (c) any other sexual service, or class of sexual services, declared by the regulations to be included in the ambit of this subsection.

- (3) In this section—

30 **appropriate prophylactic**, in respect of a particular high risk sexual activity, means a prophylactic sheath or other barrier that is effective in reducing the risks of acquiring or transmitting a sexually transmissible infection in the course of that activity.

29—Offence to use premises for purposes of sex work near schools etc

- 35 (1) An owner or occupier of premises must not provide, or cause or permit the provision of, sexual services on a commercial basis at the premises if the premises are located within the prescribed distance from protected premises.

40 Maximum penalty: \$2 500 or imprisonment for 3 months.

- (2) Subsection (1) does not apply—
- (a) in relation to premises that first become protected premises after the owner or occupier of particular premises has commenced providing, or causing or permitting the provision of, sexual services on a commercial basis at the premises; or
 - (b) to an owner or occupier of premises who causes or permits the provision of sexual services on a commercial basis at the premises if—
 - (i) the sexual services are only provided to the owner or occupier; or
 - (ii) the sexual services are provided to another person and the owner or occupier is genuinely acting in the course of his or her duties as a carer (however described) for that person; or
 - (c) in any other circumstances prescribed by the regulations.
- (3) In proceedings for an offence against subsection (1), it is a defence for the defendant to prove that he or she did not know, and could not reasonably have been expected to have known, that particular premises were protected premises.
- (4) In proceedings for an offence against subsection (1), it is not necessary for the prosecution to establish that—
- (a) a service of a kind referred to in the definition of ***protected premises*** was, in fact, being provided at the protected premises at the time of the alleged offence; or
 - (b) that a child or other person was, in fact, at the protected premises at the time of the alleged offence.
- (5) For the purposes of this section, a reference to premises includes a reference to any part of the premises.
- (6) In this section—
- child care centre*** means premises in which more than 4 young children are, for monetary or other consideration, cared for on a non-residential basis apart from their parents or guardians;
- Adelaide central business district*** means the area of the City of Adelaide bounded—
- (a) on the north by the southern alignment of North Terrace; and
 - (b) on the south by the northern alignment of South Terrace; and
 - (c) on the east by the western alignment of East Terrace; and
 - (d) on the west by the eastern alignment of West Terrace;

prescribed distance, from protected premises, means—

- (a) if the protected premises are located within the Adelaide central business district—50 metres; or
- (b) in any other case—200 metres;

protected premises means premises that are regularly used—

- (a) as a child care centre; or
- (b) to provide kindergarten, preschool, primary school or secondary school services; or
- (c) to conduct religious services; or
- (d) to provide any other class of service declared by the regulations to be included in the ambit of this definition,

but does not include a home school, a private home or any other premises of a kind excluded by the regulations from the ambit of this definition.

Part 5—Amendment of *Workers Rehabilitation and Compensation Act 1986*

12—Amendment of section 3—Interpretation

Section 3(1), definition of *employer*, (a)—after "subsection (9)" insert:
or section 6C

13—Insertion of section 6C

After section 6B insert:

6C—Additional provisions in respect of sex work

- (1) 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 3, the provision of such a service will be taken to be work of a prescribed class if—
 - (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
 - (iii) the worker does not employ any other person to carry out any part of the work; and

(iv) the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed an average of \$50 per month;

(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

(ii) a person of a class prescribed by the regulations for the purposes of this paragraph;

(c) in determining an application under section 103, 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 sexual services on a commercial basis (other than where the provision of the services is prohibited under a law of the State);

(d) the regulations may exempt a specified class of persons or bodies from a specified provision of this Act.

(2) In this section—

sexual services and *the provision of sexual services on a commercial basis* have the same meanings as in Part 6 of the *Summary Offences Act 1953*.

Schedule 1—Transitional provision

1—Application of section 59(1) of *Workers Rehabilitation and Compensation Act 1986* to certain employers

(1) This clause applies to an employer of a person who provides sexual services on a commercial basis.

(2) An obligation under section 59(1) of the *Workers Rehabilitation and Compensation Act 1986* will be taken not to apply to an employer to whom this clause applies during the prescribed period.

Note—

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 WorkCover Corporation.

(3) Nothing in this clause—

(a) limits the operation of section 59(3) of the *Workers Rehabilitation and Compensation Act 1986*; or

(b) prevents—

(i) an employer to whom this clause applies from applying for registration by the WorkCover Corporation during the prescribed period; or

(ii) such an application being processed by the WorkCover Corporation during the prescribed period.

(4) In this clause—

employer has the same meaning as in the *Workers Rehabilitation and Compensation Act 1986*;

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

sexual services and *the provision of sexual services on a commercial basis* have the same meanings as in Part 6 of the *Summary Offences Act 1953* (as enacted by this Act).