

Legislative Council—No 109

As introduced and read a first time, 30 August 2023

South Australia

**Summary Offences (Prostitution Law Reform)
Amendment Bill 2023**

A BILL FOR

An Act to amend the *Summary Offences Act 1953* and to make related amendments to the *Criminal Law Consolidation Act 1935*.

Contents

Part 1—Preliminary

1 Short title

Part 2—Amendment of *Summary Offences Act 1953*

2 Amendment of section 4—Interpretation

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

4 Amendment of heading to Part 5

5 Repeal of sections 25, 25A and 26

6 Insertion of Part 5B

Part 5B—Sex in exchange for payment

26F Interpretation

26G Requesting the provision of sex in exchange for payment

26H Sex provided in exchange for payment

26I Procuring person to provide sex in exchange for payment

26J Receiving payment or benefit derived from provision of sex in exchange for payment

26K Minister to arrange assistance for persons wishing to no longer provide sex in exchange for payment

7 Amendment of section 27—Interpretation

8 Amendment of section 28—Keeping and managing brothels

Schedule 1—Related amendments

Part 1—Amendment of *Criminal Law Consolidation Act 1935*

1 Amendment of section 5—Interpretation

2 Amendment of section 270—Punishment for certain offences

3 Amendment of Schedule 11—Abolition of certain offences

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Summary Offences (Prostitution Law Reform) Amendment Act 2023*.

Part 2—Amendment of *Summary Offences Act 1953*

2—Amendment of section 4—Interpretation

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

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

(1) Section 21(1)(a)—delete ", prostitutes"

(2) Section 21(2)—delete ", prostitutes"

4—Amendment of heading to Part 5

Heading to Part 5—delete "and morality"

5—Repeal of sections 25, 25A and 26

Sections 25, 25A and 26—delete the sections

5 6—Insertion of Part 5B

After section 26E insert:

Part 5B—Sex in exchange for payment

26F—Interpretation

(1) In this Part—

10 *advertise* means—

- (a) place or display a sign in, or that is visible from, a public place; or
- (b) distribute to the public any unsolicited leaflet, handbill or other document;

15 *brothel* has the same meaning as within section 27;

payment includes any form of consideration (whether monetary or otherwise);

20 *sex* means any activity 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 the regulations from the ambit of this definition;

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

25 (2) For the purposes of this Part, a reference to a payment being made or offered by a person will be taken to include a reference to a payment that is made or offered by the person on behalf of another.

26G—Requesting the provision of sex in exchange for payment

(1) A person who—

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- (a) requests the provision of sex by a person in exchange for payment; or
 - (b) offers payment to a person in exchange for the provision of sex by that person,

is guilty of an offence.

35 Maximum penalty:

- (a) for a first offence—\$2 500;

- (b) for a subsequent offence—\$5 000 or imprisonment for 1 year.

Expiation fee for a first offence: \$210.

- (2) Subsection (1) applies regardless of to whom the sex was to be provided, or whether the sex was in fact provided or a payment made.
- (3) In determining whether an offence is a first or subsequent offence for the purposes of this section—
 - (a) any previous offence against subsection (1); and
 - (b) any previous offence against section 26H, for which the defendant has been found guilty or that the defendant has expiated will be taken into account.
- (4) The court, in sentencing a person found guilty of an offence against subsection (1), may order the person to undertake a suitable educational program relating to respectful relationships.
- (5) The court, in sentencing a person found guilty of an offence against subsection (1), being the first offence committed by the person against that subsection, ought to give special consideration to imposing a penalty without conviction in accordance with section 24 of the *Sentencing Act 2017*.

26H—Sex provided in exchange for payment

- (1) A person to whom sex is provided in exchange for payment is guilty of an offence.

Maximum penalty:

- (a) for a first offence—\$5 000 or imprisonment for 1 year;
 - (b) for a subsequent offence—\$10 000 or imprisonment for 2 years.
- (2) Subsection (1) applies whether the payment was made by the person to whom sex was provided or by another person.
 - (3) A person who provides sex in exchange for payment cannot be prosecuted—
 - (a) for an offence against subsection (1); or
 - (b) for aiding, abetting, counselling or procuring the commission of an offence against subsection (1).

26I—Procuring person to provide sex in exchange for payment

- (1) A person who procures a person to provide sex to another person in exchange for payment is guilty of an offence.

Maximum penalty: Imprisonment for 2 years.

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- (2) For the purposes of subsection (1), a person *procures* another person to provide sex in exchange for payment if the person—
- (a) causes, assists, facilitates, persuades or encourages the other person to provide sex to a person in exchange for payment;
or
- (b) advertises that the person (or some other person) is willing to employ or engage a person to provide sex to another person in exchange for payment; or
- 10 (c) approaches the other person with a view to causing, assisting, facilitating, persuading or encouraging the person to accept employment or an engagement to provide sex to a person in exchange for payment.
- (3) Subsection (1) applies regardless of the following:
- (a) whether payment was in fact made or to whom it was made;
- 15 (b) whether sex was in fact provided by the person who was procured.
- (4) However, subsection (1) does not apply to conduct of a kind prescribed by the regulations.

20 **26J—Receiving payment or benefit derived from provision of sex in exchange for payment**

- (1) A person who receives payment or some other material benefit that the person knows is derived directly, or indirectly, from a payment made to another person in exchange for the provision of sex by that person (the *provider*) is guilty of an offence.
- 25 Maximum penalty: Imprisonment for 1 year.
- (2) Subsection (1) does not apply to a person who—
- (a) lives with the provider on a genuine domestic basis; or
- (b) receives the payment or other material benefit as a result of a duty of care owed by the provider to the person; or
- 30 (c) receives the payment or other material benefit in consideration for goods or services that the person offers, on the same terms and conditions, to the general public; or
- (d) receives the payment or other material benefit in consideration for goods or services that the person does not offer to the general public, but that the person offered or provided to the provider and the payment or benefit was proportionate to the value of the goods or services,
- 35 provided that the person did not, in relation to receiving the payment or other material benefit—
- (e) use or threaten violence, intimidation or coercion in relation to the provider; or
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- (f) abuse a position of trust, power or authority in relation to the provider; or
- (g) provide a drug, alcohol or any other intoxicating substance to the provider for the purpose of inducing, encouraging or causing the provider to provide sex in exchange for payment; or
- (h) engage in conduct referred to in section 26I(2) in relation to the provider.

- (3) However, subsection (2)(a) does not apply if the person who lives with the provider on a genuine domestic basis keeps or manages a brothel in which the provider engages in the provision of sex in exchange for payment.

26K—Minister to arrange assistance for persons wishing to no longer provide sex in exchange for payment

- (1) A person who wishes to no longer provide sex in exchange for payment may apply without charge to the Minister for assistance under this section.
- (2) An application under this section must be made in a manner and form determined by the Minister.
- (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 the applicant's transition from providing sex in exchange for payment 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:
 - (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;
 - (d) assistance in finding employment;
 - (e) assistance in accessing services, including services provided by registered health practitioners and legal practitioners.
- (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.
- (6) However, an offer of assistance under this section does not create legally enforceable rights or entitlements.
- (7) In this section—

Minister means—

 - (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.

7—Amendment of section 27—Interpretation

Section 27, definition of *brothel*—delete the definition and substitute:

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brothel means premises—

- (a) to which persons resort for the purposes of being provided with sex in exchange for payment; or
- (b) occupied or used for the purposes of the provision of sex in exchange for payment,

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but does not include the primary residence of a person who provides sex in exchange for payment or a premises of a class excluded by regulation from the ambit of this definition;

8—Amendment of section 28—Keeping and managing brothels

Section 28(1)(b)—delete paragraph (b) and substitute:

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- (b) receives money or some other material benefit paid in a brothel in respect of the provision of sex in exchange for payment,

Schedule 1—Related amendments

Part 1—Amendment of *Criminal Law Consolidation Act 1935*

1—Amendment of section 5—Interpretation

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

2—Amendment of section 270—Punishment for certain offences

Section 270(1)(b)—delete "a common bawdy house or"

3—Amendment of Schedule 11—Abolition of certain offences

Schedule 11, clause 1—after paragraph (30) insert:

25

and

- (31) offences relating to prostitution.