



Parliament of  
South Australia

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**REPORT OF THE**  
**SELECT COMMITTEE**  
**ON THE**  
**STATUTES AMENDMENT**  
**(DECriminalISATION OF SEX WORK)**  
**BILL 2015**

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*Laid on the Table of the Legislative Council and ordered to be printed on 30 May 2017*

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**Second Session, Fifty-Third Parliament 2015-2017**

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## **1.1 APPOINTMENT**

On 9 September 2015, a Select Committee of the Legislative Council was established to inquire into and report on the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015.

At the commencement of this inquiry, the Committee advertised for interested persons to provide written submissions or to register an interest in appearing before it. The Committee met on 10 occasions to hear evidence. A list of people who appeared before the Committee is contained in Appendix 1. The Committee received 86 written submissions, which are listed in Appendix 2.

## **1.2 MEMBERSHIP**

Hon. J.M.A Lensink (Chairperson)  
Hon. R. L. Brokenshire MLC  
Hon. J. A. Darley MLC  
Hon. T. A. Franks MLC  
Hon. J. M. Gazzola MLC  
Hon. A. L. McLachlan CSC MLC  
Hon. T. T. Ngo MLC

*Secretary*  
Leslie Guy

*Research officer*  
Carmel Young

## **1.3 PURPOSE OF THE BILL**

The Statutes Amendment (Decriminalisation of Sex Work) Bill 2015 (the Bill) is currently before the Legislative Council and has passed the second reading stage.

The Bill seeks to amend various pieces of legislation to decriminalise sex work, to prohibit discrimination against people who are or have worked as sex workers, to allow for certain convictions to be spent, and to provide sex workers with the same rights and protections as other workers.

The Bill would amend the following South Australian Acts:

*Criminal Law Consolidation Act 1935*  
*Equal Opportunity Act 1984*  
*Spent Convictions Act 2009*  
*Summary Offence Act 1953*  
*Return to Work Act 2014*

## 1.4 OVERVIEW OF EVIDENCE

The Committee heard evidence from a range of stakeholders including government departments and agencies, sex workers and their representatives, professional associations and community groups, who presented evidence about sex work and the potential impacts of the proposed Statutes Amendment (Decriminalisation of Sex Work) Bill 2015.

While the Committee received submissions from male sex workers and transgendered sex workers, the majority of evidence heard related to women sex workers.

Overall, the evidence heard and submitted to this inquiry supported the proposed amendments to the Bill.

The Committee heard from groups and individuals who, for moral, religious or personal reasons, opposed the decriminalisation of sex work. Much of the evidence heard and received by the Committee conflated the legal principles of legalisation with decriminalisation, arguing that decriminalisation either leads to legalisation or decriminalisation is the same as legalisation. These arguments are considered outside the terms of reference of the Committee.

The evidence heard by the Committee can be divided into the following key matters:

- benefits of decriminalisation for sex workers, including access to the same rights and work health and safety protections as other workers, provision of access to finance, removal of the stigma associated with illegal work, increasing opportunities for workers to move into other fields of work;
- impacts upon policing, organised crime, sexual servitude and trafficking;
- the perception of criminal activity within the sex services industry;
- human rights;
- health;
- opposition to sex work based upon moral or religious grounds;
- feminist arguments for and against decriminalisation; and
- the preference for other models of legislation or criminalisation.

## 2. DISCUSSION OF THE BILL

On 1 July 2015, the Hon. J. M. A Lensink MLC introduced the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015 (the Bill) in the Legislative Council. The Bill seeks to decriminalise sex work by amending the *Criminal Law Consolidation Act 1935*, *Equal Opportunity Act 1984*, *Spent Convictions Act 2009*, *Summary Offence Act 1953* and the *Return to Work Act 2014*.

### ***Criminal Law Consolidation Act 1935***

The *Criminal Law Consolidation Act 1935* (CLC Act) is an Act to consolidate certain Acts relating to the criminal law; and for other purposes.<sup>1</sup>

The Bill makes the following amendments to the CLC Act to decriminalise sex work by:

- amending section 270 by deleting the reference to ‘bawdy house’; and
- a variation to Schedule 11 which removes offences relating to prostitution.

The CLC Act is further amended by the insertion of new section 68AA which prohibits the provision of sexual services to children.

To be clear, there is no intention, nor provisions within the Bill, to remove sections 65A-68 from the CLC Act. These sections protect against the serious offences of sexual servitude (including specific protections for children) (s66), deceptive recruiting (s67) and the prohibition on the use of children in sexual services (s68). The Hon. JMA Lensink MLC MLC discussed this during her second reading speech on the Bill:

In the Criminal Law Consolidation Act, 65A is the definition section; 66 covers sexual servitude and related offences and makes it illegal to compel another person to provide commercial sexual services; 67 refers to deceptively recruiting someone for commercial sexual services—if you dupe someone into it; and 68 is the use of children in commercial sexual services... there is certainly no intention to remove those from the Criminal Code. I think we all support those particular provisions. (Hon. JMA Lensink MLC, second reading speech on the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015, Hansard, 1 July 2015, p.1109)

### ***Equal Opportunity Act 1984***

The *Equal Opportunity Act 1984* (the EO Act) is an Act to promote equality of opportunity between the citizens of this State; to prevent certain kinds of discrimination based on sex, race, disability, age or various other grounds; to facilitate the participation of citizens in the economic and social life of the community; and to deal with other related matters.<sup>2</sup>

The Bill extends the EO Act to protect individuals against discrimination on the grounds of being or having worked as a sex worker. The Bill inserts the definition of “sex worker” into the Act and prohibits discrimination on the ground of being, or having worked as, a sex worker. The Act is further amended to prevent discrimination in the following situations -

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<sup>1</sup> Long title of the *Criminal Law Consolidation Act 1935*

<sup>2</sup> Long title of the *Equal Opportunity Act 1984*

- by associations;
- in the provision of good and services;
- by a person disposing of land;
- in relation to accommodation; and
- by charities.

The Bill also amends section 85ZK to include sex workers, or people who have formerly worked as sex workers, under the measures intended to achieve equality.

The purpose of amending the EO Act was outlined during the Bill’s seconding reading speech -

The amendment of the Equal Opportunity Act is important for people who perform other jobs who may be discriminated against, so one of the things that I think a number of people who have raised concerns about decriminalisation say is that we need to provide options for people who may wish to exit the industry.

By amending the Equal Opportunity Act, we can assist people who either have other jobs or who may wish to exit the industry. There is a range of existing provisions within that legislation that have to do with discrimination on a range of grounds including marital domestic partnership, pregnancy, care and responsibility, religious dress and so forth. There is a range of amendments which add the ground of being or having been a sex worker to those as well. (Hon. JMA Lensink MLC, second reading speech, Hansard, 1 July 2015, p.1109)

### ***Spent Convictions Act 2009***

The *Spent Convictions Act 2009* is an Act to limit the effect of a person's conviction for certain offences if the person completes a period of crime free behaviour; and for other purposes.<sup>3</sup>

The reasons for amending the *Spent Convictions Act 2009* was described as “important for people who may have a particular conviction and will affect their future criminal record, so there are amendments to include somebody who has an offence in that section to be part of the Spent Convictions Act.” (Hon. JMA Lensink MLC, second reading speech, Hansard, 1 July 2015, p.1109)

The Bill amends the *Spent Convictions Act 2009* by inserting section 16A which lapses the following convictions -

- offences under section 270(1)(b) of the CLC Act;
- an offence against section 21 of the *Summary Offences Act 1953* involving premises frequented by prostitutes;
- an offence against section 25, 25A or 26 or Part 6 of the *Summary Offences Act 1953*; and
- a common law offence of prostitution in relation to sex work.

### ***Summary Offences Act 1934***

The *Summary Offences Act 1934* is an Act to make provision for certain offences against public order and for other summary offences; to make provision for powers of police officers in relation to investigation of offences; and for other purposes.<sup>4</sup>

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<sup>3</sup> Long title of the *Spent Convictions Act 2009*

<sup>4</sup> Long title of the *Summary Offences Act 1934*

The *Summary Offences Act 1934* is amended by deleting the definition of “prostitute” and “prostitutes” from the Act. The Bill also deletes sections 25, 25A and 26, which cover soliciting, the procurement for prostitution (procuring, advertising or approaching individuals to work as prostitutes), and the offence of living on the earnings of prostitution, respectively. The Bill also revokes Part 6 of the Act that contains provisions about brothels.

### ***Return to Work Act 2014***

Section 3 of the *Return to Work Act 2014* outlines the objects of the Act –

- (1) *The object of this Act is to establish a scheme that supports workers who suffer injuries at work and that has as its primary objective to provide early intervention in respect of claims so as to ensure that action is taken to support workers—*
  - (a) *in realising the health benefits of work; and*
  - (b) *in recovering from injury; and*
  - (c) *in returning to work (including, if required, after retraining); and*
  - (d) *in being restored to the community when return to work is not possible.*
- (2) *In connection with subsection (1), the other objectives that apply with respect to this Act are—*
  - (a) *to ensure that workers who suffer injuries at work receive high-quality service, are treated with dignity, and are supported financially; and*
  - (b) *to ensure that employers' costs are contained within reasonable limits so that the impact of work injuries on South Australian businesses is minimised; and*
  - (c) *to provide a reasonable balance between the interests of workers and the interests of employers; and*
  - (d) *to reduce the overall social and economic cost of work injuries to the State and to the community; and*
  - (e) *to support activities that are aimed at reducing the incidence of work injuries; and*
  - (f) *to reduce disputation when workers are injured at work by improving the quality of decision-making and by reducing adversarial contests to the greatest possible extent.*
- (3) *A person exercising judicial, quasi-judicial or administrative powers must interpret this Act in the light of its objects and these objectives without bias towards the interests of employers on the one hand, or workers on the other.*
- (4) *The Corporation, the worker and the employer from whose employment a work injury arises must seek to achieve an injured worker's return to work (taking into account the objects and requirements of this Act).*

The Bill inserts section 6A into the *Return to Work Act 2014*, which provides for additional provisions in respect of sexual services provided on a commercial basis. The insertion of section 6A enables “people who work in that industry to be covered by provisions which relate to people who are workers... [and] will mean that they will need to be subject to paying WorkCover levies.” (Hon. JMA Lensink MLC, second reading speech, Hansard, 1 July 2015, p.1109)

*See Appendix 3 for the Bill in its entirety.*

### 3. *TYPES OF SEX WORK*

The Australian Institute of Criminology Report, *Migrant Sex Workers in Australia*, discusses the types of sex work within the industry -

In the Australian literature on sex work, brothel work is generally defined as multiple sex workers working at premises where services are provided on-site. Massage parlours are similar in that they have several employees and provide services on-site, but the 'primary service offered is "relaxation massage"' (Donovan et al. 2012: 19). Private work refers to a sex worker arranging jobs independently (Donovan et al. 2012), where services are provided at private premises (owned or leased by the worker) or an off-site location arranged by a client. Escort agency work involves jobs that are arranged by a business (escort agency), and services are provided off-site at a location arranged by the client. Some brothels fulfil a similar function by arranging services to be provided by their employees off-site (Donovan et al. 2012). It is acknowledged, however, that these are simplified distinctions that may not reflect all sex workers' situations.<sup>5</sup> (Renshaw, Kim, Fawkes & Jeffreys, 2015, p.3)

The Sex Industry Network (SIN) submission to the Select Committee provided the following outline of the types of sex work engaged in South Australia:

The established sex industry is made up of brothels (sometimes called parlours or working 'inhouse'), escort agencies, massage studios, small collectives, independent (or private) workers, and a small number of street based sex workers. A sex worker may work in any, or more than one of these parts of the industry at one time or during their career as a sex worker. Like any other type of employment some sex workers may stay in the sex industry for only a short period of time, or work intermittently as need arises. Other sex workers may choose work in the sex industry as a long term career choice.

The majority of sex workers work in-house, where the client comes to them. Brothels in SA are small compared to those in other states and may employ a total of anywhere from 2 - 15 sex workers, although 2-3 is a more common number of staff on shift at any one time. The majority of brothels in SA are private or independent workers or small collectives of workers working together. Under our current laws even a single independent worker working from home is considered as working from a brothel and is therefore working illegally. Some brothels are masked as massage services as a response to heavy policing of the sex industry in the 1990s. Support and health promotion activities aimed at sex workers are severely hampered in these contexts.

Escort services are offered in the client's home or a hotel/motel room and therefore the most frequently used prostitution charges are not applicable in this context. Street based sex work is a traditional form of sex work but comprises only a tiny sector of the SA sex industry. Street based sex workers tend to be the most marginalised sex workers and their visibility and mode of working makes them the most vulnerable to arrest, assault and harassment. (Submission 30, p.2)

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<sup>5</sup> L Renshaw, J Kim, J Fawkes & E Jeffreys, *Migrant Sex Workers in Australia*, Australian Institute of Criminology, 2015.



#### 4. *LEGAL APPROACHES*

The regulation and control of sex work is within the legislative purview of the states and territories, consequently the laws and structures vary across the jurisdictions. Commonwealth law leads in relation to certain criminal matters such as trafficking.

Major reforms occurred in New South Wales, Victoria, Queensland, the Northern Territory and the Australian Capital Territory in the 1970s and 1990s. These reforms led to the decriminalisation, legalisation and implementation of licensing schemes for commercial sex work. These reforms led to the decriminalisation, legalisation and implementation of licensing schemes for commercial sex work, reflecting a variety of factors including: changing social mores regarding sex work, growing support for harm reduction for sex workers and the links between illegal sex work and corruption revealed in the Wood and Fitzgerald inquiries.” (Renshaw, Kim, Fawkes & Jeffreys, 2015, p.4)

Currently there are three legal approaches used to regulate the sex work industry across Australia: criminalisation, legalisation/licensing and decriminalisation. The following extract from the 2012 research paper prepared by the South Australian Parliament Research Library identifies the core aspects of each approach.

##### THE LEGAL APPROACHES <sup>6</sup>

There are a number of different legal approaches that jurisdictions may utilise in the management of prostitution. These fall under three broad categories of criminalisation, decriminalisation, and legalisation, and are defined as follows.

##### *Criminalisation*

Under the criminalisation model, prostitution is prohibited and sex work acts are listed under the criminal code so that those engaging in such acts are liable to be prosecuted for criminal offences. However, this model is not absolute and can be applied in various graduations. For example, there are forms of prohibition that still allow for the sale of sex but prohibit activities such as “soliciting, living off the earnings of prostitution, brothel keeping and procurement.” Such an approach makes it difficult to sell sex without breaking some laws and so “effectively criminalises prostitution”. An additional refinement of the criminalisation model allows for two further different approaches to prostitution. Namely, the criminal code may criminalise either the *selling* or the *buying* of sexual services, but not necessarily both simultaneously. As Crofts and Summerfield explain, “the traditional approach is the former, which is aligned with abolition of sex work and is supported variously on feminist, moral or religious grounds.”

##### *Legalisation*

Prostitution is not seen as a criminal offence under a legalisation model and rather it is permitted provided that it is in accordance with various regulations and restrictions. For example, under most legalisation models, street-based sex work still remains illegal, while other sex work is authorised through the provision of licences and regulations such as mandatory health checks. Under the legalisation approach, “licenses can be managed by police and the judiciary, elected municipal authorities, or independent specialist boards. Businesses or workers without the necessary permits are subject to criminal penalties.” The rationale is usually to prevent the involvement of criminals in the prostitution industry. Under the legalisation model, it is understood that prostitution normally exists and can operate without legislation. However, by providing a way to manage the industry and bring

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<sup>6</sup> Skrzpiec, L, and Dimopoulos, E, *Different Approaches to Prostitution Regulation: A Comparative Analysis*, South Australian Parliament Research Library, 2012.

**Please note** - references have been removed from this extract but complete referencing and further sources can be found in the complete paper.

it into a legal framework, the hope is that the criminal elements will be forced out. This rationale was clearly evident in states such as Queensland and Victoria whose legislative changes to regulate rather than criminalise prostitution were in response to organised crime and police corruption.

The legalisation approach does not aim to necessarily condone prostitution, but instead acts to manage what is seen as an inevitable part of society. The objectives of specific regulations are to minimise harm to the community and those involved in the industry, and not to necessarily expunge prostitution from society.

### ***Decriminalisation***

Through decriminalisation laws that prohibit, criminalise or restrict the act of prostitution are repealed so that sex work is seen as being equivalent to all other work. This is in contrast to the legislation model discussed above. As Mossman explains, the key difference between legislation and decriminalisation is that with the latter there are no *prostitution-specific* regulations imposed on the state. Rather, any regulation of the industry is predominately through the existing statutes and regulations. Thus prostitution is recognised as a legitimate business and, as such, it comes under conventional employment and health regulations and is subject to standard local council business and planning controls. Those involved in prostitution have the same rights and responsibilities as other workers (e.g. paying taxes).

Generally, sex workers within the industry argue that this model provides best for their needs as it removes the stigma of prostitution (and any consequent discrimination) and allows workers access to the rights and protections held by all other workers in legitimate employment. New South Wales is one example where this approach is currently in force and it is the model that is favoured by sex workers in South Australia.

## 5. OTHER JURISDICTIONS

A detailed overview of the legal status of the various types of sex work across Australian jurisdictions is included in a table in Appendix 4.<sup>7</sup>

### CRIMINALISED

#### *South Australia, Tasmania and Western Australia*

In addition to South Australia, sex work remains criminalised in Tasmania and Western Australia -

[S]ome or almost all forms of sex work are criminalised in Tasmania, Western Australia and South Australia. (Renshaw, Kim, Fawkes & Jeffreys, 2015, p.4)

#### *Tasmania*

The *Sex Industry Offences Act 2005* imposes certain restrictions on the operation of sexual services businesses -

*Sex work in Tasmania is legal if no more than two sex workers work together, however there are conditions. Brothels and street-based sex work remain illegal. It is illegal to knowingly be a client of a sex worker working in a commercial sexual services business. However, private sex work is legal and you are permitted to work from a hotel or residence. (Scarlett Alliance)<sup>8</sup>*

In addition to the above, Part 2 of the *Sex Industry Offences Act 2005* also specifies the following offences in respect of sexual services businesses:

- prohibiting a person from intimidating, assaulting or threatening a sex worker or supplying or offering to supply drugs to a sex worker (section 7(1));
- prohibiting a person from inducing another to provide or continue to provide sexual services in a sexual services business through intimidation, assault or threats, by supplying drugs or through fraud (section 7(2));
- specific child protections (sections 8(2), 9 and 11); and
- the use of prophylactics is required (section 12).

There have been reviews of the legislation in 2008 and 2012, but to date, no legislative changes have occurred.

#### *Western Australia*

In Western Australia, sex work is largely controlled by the *Prostitution Act 2000*. A smaller number of offences are also contained in the Criminal Code, the *Health Act 1911* and the *Liquor Control Act 1988*. Criminal laws in Western Australia prohibit most prostitution related activities. However, like the laws in many common law jurisdictions, the act of prostitution in itself is not an offence. (Scarlett Alliance)

The *Criminal Code Act Compilation Act 1913* makes it an offence to be involved with prostitution and to procure people to be prostitutes (section 190 and 191). Part 2 of the *Prostitution Act 2000* prohibits the following -

- street-based prostitution for both the prostitute and the client (sections 5 and 6);
- inducing a person to act as prostitute (section 7);

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<sup>7</sup> L Renshaw, J Kim, J Fawkes & E Jeffreys *Migrant sex workers in Australia, Table 1 – Legal status of the sex industry by state/territory and sex work type*, Australian Institute of Criminology, 2015, pp.6-7.

<sup>8</sup> [www.scarlettalliance.org.au/laws/](http://www.scarlettalliance.org.au/laws/)

- to not use a prophylactic (section 8);
- the promotion of employment in the prostitution industry (section 9); and
- the promotion or publicising, or agreeing to promote or publicise any person as a prostitute, or any business involving prostitution, under a sponsorship arrangement (section 10). (Skrzpiec & Dimopoulos, 2012, p.21)

Attempts to reform legislation governing sex work have all failed to progress. “In 2008, Western Australia enacted legislation to introduce a minimalist licensing system for sex work. This legislation has not commenced and it appears that the legislation will not be proclaimed (remaining uncommenced).” (Skrzpiec & Dimopoulos, 2012, p.21) The Prostitution Bill 2011 was introduced and was intended to reform the regulation of sex work, however, the Bill failed to gain majority support and as such, the laws remain unchanged. (Skrzpiec & Dimopoulos, 2012, p.21)

## LEGALISATION OR LICENSING

### *Victoria, Queensland, the Northern Territory and the Australian Capital Territory*

Some states and both territories have adopted a form of the legalisation or licensing model to regulate sex work.

Licensing inevitably creates a ‘two-tiered system’, with some sex workers and businesses able to comply with strict regulation, and the rest unable or unwilling to comply. (Scarlett Alliance, *The Principles for Model Sex Work Legislation*, p.6)<sup>9</sup>

Victoria and Queensland have legalised sex work within brothels and implemented a licensing system to regulate the brothel industry. Private workers and sole operators are allowed to operate legally within Queensland and Victoria without a licence, but in Victoria, they must be registered and in Queensland, they must work alone. (Renshaw, Kim, Fawkes & Jeffreys, 2015, p.4-5)

In the Northern Territory, escort agencies are legal and must be registered with the NT Licensing Commission. Victoria and the Northern Territory use a similar system for escort agencies. However, the sex worker staff of escort agencies in the Northern Territory must register with police and receive a ‘free of convictions certificate’ from the Police Commissioner. Escort agency operators must enter into a contractual agreement with the worker, outlining the terms and conditions such as hours, payment, PAYE Tax, superannuation, health insurance. (Scarlett Alliance)<sup>10</sup> Violent offenders and drug related offenders, whom have committed a crime within the proceeding a 10-year time frame may not be employed in an escort agency business. Private workers and sole operators in the Northern Territory are not required to be registered or licensed but are not allowed to provide services from the same premises from which they organise their business. Brothels, street work and soliciting are prohibited in the Northern Territory. (Renshaw, Kim, Fawkes & Jeffreys, 2015, p.4-5)

The Australian Capital Territory has legalised brothels but only in two prescribed industrial suburbs. Brothels, escorts (agencies and sole operators) and private workers must register their business. Persons with a criminal history are prohibited from operating within the industry. Brothel workers are not required to register. (Renshaw, Kim, Fawkes & Jeffreys, 2015, p.4-5)

<sup>9</sup> Scarlett Alliance, *The Principles for Model Sex Work Legislation*, 2014.

<sup>10</sup> [www.scarlettalliance.org.au/laws/](http://www.scarlettalliance.org.au/laws/)

## DECRIMINALISED

### *New South Wales*

New South Wales has decriminalised all forms of sex work, with the regulations for brothels placed with the local planning and development authorities. New South Wales is the only jurisdiction to have legalised the soliciting of sex services (which affects the legality of street-based sex work) however, it is required to operate away from dwellings, schools, churches and hospitals. (Renshaw, Kim, Fawkes & Jeffreys, 2015, p.5)

The Law Society of South Australia's (the Law Society) submission to the Select Committee provides a detailed description of the decriminalisation of sex work in New South Wales and the subsequent review -

- 6.8 Sex work is decriminalised in NSW. Brothels fall within local council planning regulations, like any other business. There is no regulation with respect to escorts. Street prostitution is permitted, providing that it is away from dwellings, schools, churches and hospitals. It is illegal to live off the earnings of a sex worker, with the exception of owners and operators of brothels.
- 6.9 In June 2015, NSW's Minister for Innovation and Better Regulation announced a parliamentary inquiry into brothel regulation. The Select Committee on the Regulation of Brothels ("the Select Committee") was established to inquire into and report on:
  - a. appropriate local and State Government regulatory and compliance functions for brothels
  - b. the demarcation in local and State Government roles and responsibilities; and
  - c. possible reform options that address social, health and planning challenges associated with legal and illegal brothels.
- 6.10 The Select Committee was also charged with considering a number of specific issues in its inquiry, such as the protection of sex workers, including in respect to organised crime and sex trafficking, and options to maintain the high level of public health outcomes.
- 6.11 The report of the Select Committee was handed down on 11 November 2015. It concluded that there would be no public purpose to re-criminalise sex work in NSW, and that it would be undesirable to:
  - a. require sex workers to be licensed and, as such, be stigmatised by being forever recorded as having worked in the sex industry; and
  - b. criminalise clients of sex workers.
- 6.12 The Select Committee recommended a limited system of registration for owners and managers of brothels, similar to the system that operates in New Zealand. The recommendation was made with the aim of ensuring that only fit and proper persons own or manage brothels which, the Select Committee stated, is important in a decriminalised environment to protect sex workers from exploitation and also to protect the community against organised crime<sup>6</sup>.
- 6.13 The Select Committee made the following findings in relation to the protection of the health and safety of sex workers, employment/discrimination protections and public health outcomes:
  - a. while some sex workers are independent and able to freely choose to participate in the sex industry, others are vulnerable and may not be freely

exercising a choice due to poverty, drugs, mental health issues, language barriers and sexual servitude

- b. there is an underground sex services industry operating in NSW due to a large number of businesses offering sexual services in premises without planning approval. This makes those working within such an environment vulnerable to exploitation, in terms of sexual servitude, health, safety and employment protections.
- c. sexual servitude occurs in NSW
- d. criminal networks operate in parts of the NSW sex services industry
- e. some sex workers are subject to undesirable industrial practices that would not be acceptable in other work places. The sex services industry posed particular challenges. Practices included financial punishments and being forced to work up to 17 hours or more per day against the threat of deportation.
- f. sex workers were subject to pressures from clients to compromise their OHS. The nature of the industry's operation made it difficult for the regulator to protect workers.
- g. the incidence of sexually transmitted infections (STIs) amongst sex workers in NSW was reported to be equal or better than the population as a whole, but it was difficult to obtain accurate data given that individual sex workers are not registered. The rates of STIs in a more regulated environment, such as Victoria were equivalent to those in the less regulated environment of NSW.
- h. medical and other experts concluded that decriminalisation has provided favourable public health outcomes.
- i. greater checking and enforcement of visa conditions of sex workers is required to stop sexual servitude or trafficking. Greater coordination between Commonwealth and State Government agencies is needed to achieve this end. (The Law Society of South Australia , Submission 55, pp.4-6)

In 2015, the New South Wales Government rejected a recommendation of the Select Committee on the Regulation of Brothels, which called for the introduction of a licensing scheme in NSW. Minister for Innovation and Better Regulation, the Hon. Victor Dominello MP, stated in the Government response to the Select Committee:

The NSW Government has considered the regulatory recommendations of the final report of the Select Committee's inquiry as part of this work, as well as evidence-based best practice internationally and domestically. However, the NSW Government will not be introducing the licensing model described by the final NSW Government response to Legislative Assembly Inquiry: Regulation of Brothels report of the Select Committee because reintroducing such significant regulatory burdens and police involvement risks creating similar outcomes to recriminalising sex work. (*NSW Government response to the Legislative Assembly Inquiry into the Regulation of Brothels*, pp.2-3)<sup>11</sup>

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<sup>11</sup> The Select Committee Report and Government Response can be found here: [www.parliament.nsw.gov.au/Committees/Pages/Committeeprofile/regulation-of-brothels.aspx](http://www.parliament.nsw.gov.au/Committees/Pages/Committeeprofile/regulation-of-brothels.aspx)

## 6. ***BACKGROUND TO THE SOUTH AUSTRALIAN BILL AND CURRENT LEGISLATION***

There have been numerous iterations of legislation introduced into the South Australian Parliament with the purpose of reforming sex work.

...between 1980 and 1999 there were several attempts at reform with some very close votes in both chambers. There were a number of select Committees which did a great deal of work and I think particularly of note is the 1996 report of the Social Development Committee. (Hon. JMA Lensink MLC, second reading speech, Hansard 1 July 2015, p.1108)

The current Bill follows on from the Statutes Amendment (Decriminalisation of Sex Work) Bill 2013 introduced into the House of Assembly in May 2014 by the Member for Ashford, the Hon. Steph Key MP. A further attempt by the Hon. Steph Key MP to introduce the bill in 2015 did not progress due to the prorogation of Parliament.

In more recent history there has been a hiatus, until 2012 under the sponsorship of the member for Ashford. On 31 May 2012, she introduced the Statutes Amendment (Sex Work Reform) Bill 2012 into the House of Assembly, which was defeated on 15 November. An amended bill was brought in on 16 May 2013, that being the Statutes Amendment (Decriminalisation of Sex Work) Bill. Then there was the bill from May last year, which I understand did not progress because of the prorogation of parliament. (Hon. JMA Lensink MLC, second reading speech, Hansard 1 July 2015 p.1108)

In her second reading to Parliament, the Hon. Michelle Lensink MLC discussed the need to bring clarity to what is and is not illegal in relation to sex work in South Australia and that the lack of clarity has led to the many attempts at reform -

...there is certainly a range of inconsistencies. The former police commissioner, Mal Hyde, was fairly unequivocal about the fact that the laws in South Australia are out of date and unnecessarily tie up police resources. He made the following statements:

That the moral issue of prostitution is not one for police to debate. Any legislation must address possible harms associated with prostitution and any regulatory system that is put in place must be practically effective and workable for police.

Our former shadow attorney-general Stephen Wade received the following comments from SA Police in the context of the 2012 bill in relation to enforcement, and I quote:

The policing of brothel-based prostitution is problematic due to the restrictive nature of current legislation and precedent set by South Australian courts. The matter of *Police v Boileau* in 1999 provided police with practical difficulties in improving the two elements of offences related to brothels, the payment of money and that a sexual act took place for that payment.

This altered the then investigative approach to one which now proactively focuses on issues associated with brothel-based prostitution such as illicit drugs, illegal immigrants, organised crime and minors. (Hon. JMA Lensink MLC, second reading speech, Hansard 1 July 2015 p.1108)

South Australia's legal framework is one of full prohibition meaning that sex work is criminalized.

Brothels are illegal pursuant to Part 6 of the *Summary Offences Act 1953* (SA). Under the *Summary Offences Act 1953*, keeping, managing and receiving money paid in a brothel in respect of prostitution or permitting a premises to be used as a brothel is

prohibited (sections 28 and 29). It is an offence to solicit or accost a person in a public place for the purpose of prostitution (section 25). A person must not engage in procurement for prostitution (section 25A). It is an offence to knowingly live, wholly or in part, on the earnings of prostitution of another person (section 26).

Division 12 of Part 3 of the *Criminal Law Consolidation Act 1935* (SA) creates offences relating to commercial sexual services, sexual servitude and the use of children in commercial sexual services (section 65A-68). (Skrzpiec & Dimopoulos, 2012, p.18)

South Australia Police (SAPOL) provided the Committee with a table (see below) which demonstrates the number of charges laid for sex work related offences for the last ten years. (SAPOL, Questions on Notice, p.2)

Offence Title	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	Total
ASK A CHILD TO PROVIDE COMMERCIAL SEXUAL SERVICES	2	1							1		3	7
EMPLOY A CHILD TO PROVIDE COMMERCIAL SEXUAL SERVICES	1	2										3
ENGAGE IN PROCUREMENT FOR PROSTITUTION	2		2	3			2		2	1	2	14
FAIL TO DISCLOSE EMPLOYMENT OFFER INCLUDES SEXUAL SERVICES				1								1
INFLECT SEXUAL SERVITUDE ON A PERSON		1	1		2		1	1	1	1		8
KEEP BROTHEL	2	4	6	5	4	1	1	5	2	5	2	37
LET PREMISES TO BE USED AS A BROTHEL								1				1
LIVING ON THE EARNINGS OF PROSTITUTION		1	3		1	1	2	1	1			10
LOITER FOR THE PURPOSE OF PROSTITUTION	1	25	45	14	13	35	21	22	3	11	1	191
PERMIT PREMISES TO BE USED AS A BROTHEL	1	1							1			3
RECEIVE MONEY PAID IN A BROTHEL	1	2	4	2	3	1	1	3	4	4	1	26
SOLICIT FOR THE PURPOSE OF PROSTITUTION	3	36	8	16	2	12	7	9	2	4		99
USE UNDUE INFLUENCE TO GAIN COMMERCIAL SEXUAL SERVICES	2	2								1	2	7
<b>Total</b>	<b>15</b>	<b>75</b>	<b>69</b>	<b>41</b>	<b>25</b>	<b>50</b>	<b>35</b>	<b>42</b>	<b>17</b>	<b>27</b>	<b>11</b>	<b>407</b>



## 7. EVIDENCE

### 7.1 *Same Rights and Protections as other workers*

Ms Jules Kim, from the Scarlett Alliance, told the Committee “sex work is an occupation and can be regulated as any other occupation.” (Transcript of Evidence, p.35) and referred to New South Wales and New Zealand, which both have a decriminalised legal framework. The Committee heard that reviews into decriminalisation in New South Wales have demonstrated better “occupational health rights and safety for sex workers, for the general community.” (Transcript of Evidence, p.38 & Submission 30, p.5)

Ms Kim argued that a criminalised work place creates space for illegality to occur. (Transcript of Evidence, p.39) The Committee heard that when an occupation is “stigmatised, marginalised and criminalised there is no recourse to exploitation.” (Transcript of Evidence, p.41) In their submission to the inquiry, the Sex Workers Outreach Program NT (SWOP) argued full decriminalisation of sex work ensures “compliance with the state’s existing business legislation.”(Submission 35, p.1) One submission representing 90 co-signatories argued criminalisation “actively infringes on people’s rights by interfering with their efforts to earn a living.” (Submission 41, p.1)

Sex Industry Network (SIN) estimates there are two thousand (2,000) sex workers in South Australia in any one-year and approximates the tenure of any one member in the industry to be ten years. The Committee heard the current criminalised legislative regime creates covert working conditions with high risks to an individual’s health and safety.

If sex work was decriminalised, exploiting or abusing sex workers would still be a criminal act and prosecuting those involved would be a much easier process if it occurred as part of a lawful business. (Submission 30, p.8)

The Working Women’s Centre (WWC) supports the decriminalisation of the sex industry so those working in the industry have the same entitlements as other workers. (Transcript of Evidence, p.30) In their submission they argued there is an “extraordinary double standard operating” when some women in society are protected from coercion, exploitation or poor management practices in their workplace, and sex workers are not because what they are doing is classed illegal. They state, “sex work is work and as such is not necessarily harmful to women.” (Submission 32)

The New Zealand Prostitutes Collective in their submission argued expanding workers’ rights and protections to sex workers protects sex workers by giving the access to appropriate legal remedies. (Submission 52)

In their submission Relationships Australia, argued the current legislation is archaic and “not in line with current community standards.” Sex workers are left unprotected and any legitimate concerns cannot be addressed. (Submission 31, p. 2)

Submissions from sex workers outlined the issues for them working in a criminalised environment, the submissions expressed ongoing concern that the work they do is criminalised. They are unable to negotiate better working conditions. (Submissions 19 & 36) Others argued they are “sex workers” not “criminals.” (Submissions 63 & 76)

SA Unions argue “sex workers are workers first” decriminalisation would protect the rights of sex workers by protecting them under the *Work, Health and Safety Act*. (Submission 35)

The Committee heard decriminalisation would allow SafeWork SA to regulate the industry using the regulatory framework that already exists for the vast majority of South Australian workers. While recognising the need to upskill their inspectorate to deal with a new work environment, SafeWork SA did not foresee any insuperable problems in coordinating with the sex industry. SafeWork SA's policy is to work in partnership with a range of industries to identify key risks. The sex industry would be no different and SafeWork SA would develop partnerships with "business operators, employers, employees, workers contractors." (Transcript of Evidence, p.17)

Sex work would be subject to the same risk management principles that would apply to other forms of work. SafeWork SA's work health and safety inspectors would have the same powers to enforce compliance with the law. Its inspectors would engage in notified and random inspections as is the practice across a range of industries and the sex industry would be no different. SafeWork SA would also work with the industry to educate workers and employers, and business operators about safe work practices. (Transcript of Evidence, p.31)

The Committee heard there could possibly be an overlap between jurisdictions (interstate and federal) and the relevant government departments and agencies, but SafeWork SA did not see this as being any impediment to their jurisdiction or that of other agencies.

We have agreements and MOUs with key agencies where we overlap, so we have an identified process where, if we get notified and it impacts on someone else, we immediately notify them and then we work together to say who is the lead. (Transcript of Evidence, p.20)

Family Voice believe that the "legislation is exploitative" and stated that if sex work was to become a normal business, sex workers would be subject to "the customer is always right" and "he who pays the piper calls the tune" as other businesses are. (Submission 16, p.11)

The Queensland Director of the Australian Christian Lobby, Mrs Wendy Francis, argued the Bill would not remove associated stigma nor would it remove discrimination on the grounds that prostitution represents "structural inequality by gender, class and race." (Transcript of Evidence, p.44)

## **7.2 Provide access to finance**

The Law Society told the Committee the benefits of having a "legitimate job that is legitimately recognised" such as access to tax records and Centrelink make it easier for those who wish to leave the industry. (Transcript of Evidence, p.103)

The *Income Tax Assessment Act 1936* (Cth) makes no distinction between income from legal or illegal activities. The Committee heard and received evidence from sex workers who argued they pay income and other taxes, often as sole operators and under other occupations. However, due to the criminalised framework of sex work, savings and possessions are classified as the proceeds of crime, regardless of whether the correct amount of tax has been paid. Sex workers argue they do not receive the same protections as other tax-payers. (Transcript of Evidence, p.161, Submissions 33 & 19)

The Committee heard evidence that working in an illegal environment prevents access to "bank guarantees" or purchasing real estate. (Transcript of Evidence, p.162)

### 7.3 Remove the stigma associated with illegal work

Evidence and submissions to the Committee argue that decriminalisation would remove the stigma and associated discrimination and provide sex workers access to the rights and protections held by all other workers in legitimate employment. (Submission 30, p.4) Ms Kim stated “decriminalisation empowers sex workers to access their rights as workers”. (Submission 40, p.8)

Ms Ari Reid from the Sex Industry Network (SIN) told the Committee the proposed legislation will benefit sex workers through increased industrial protection, improved relationships with the police and decreased barriers to accessing the same rights as other citizens. (Transcript of Evidence, p.3)

In 1999, the Scarlet Alliance and the Australian Federation of AIDS Organisations conducted a national survey to identify discrimination in the employment conditions and personal lives of sex workers in Australia. The report titled *Unjust and Counter-Productive: The Failure of Governments to Protect Sex Workers from Discrimination* found that sex workers experienced discrimination on the bases of their occupation in a number of areas:

- Access to goods and services, including credit cards, loans, insurance, and superannuation;
- Discriminatory advertising policies, higher fees, special conditions, unapproved changes to pre-paid advertisements;
- Discrimination in housing and accommodation, difficulties in obtaining rent agreements, eviction, rude treatment, non-consensual disclosure of occupation to landlord;
- Discrimination in seeking other employment stigma affecting employers decisions to recruit or dismiss staff, particularly in occupations such as teaching or policing;
- Criminal record discrimination because the place or nature of sex work has been deemed illegal;
- Intersectional discrimination on the basis of HIV status and sex work, including criminalisation, poor treatment and harassment from health providers, prosecution and jail; and
- Harassment vilification and social exclusion on the basis of sex work status. (Submission 30, pp.13-14)

The Law Society told the Committee decriminalisation will remove the associated stigma and will create better opportunities and livelihoods for those in the industry. (Transcript of Evidence, p.108)

Submissions from sex workers argued that sex work was a personal choice and they resented the implication they were victims, drug dependant, mentally unstable, or threats to society because they worked in an illegal industry. This type of stigmatization prevented sex workers from seeking the assistance of medical professionals and the reporting of crime for fear of further criminalisation. (Submissions 17, 24, 37, 58, 66, 68, 69, 70, 71) The Committee heard sex workers fear both the illegal nature of their work and the risk that information they provide to medical professionals and other services could be used against them in custody cases. (Submission 36) One submission stated the current laws “dehumanize, demoralize, disempower, and inhibit sex workers.” (Submission 64)

The submission from the Australian Services Union (SA & NT Branch) argued decriminalisation would improve health and safety within the industry and will provide sex workers with the “fundamental right to unionise.” (Submission 78)

Sex workers, afraid of being prosecuted, are unlikely to report crimes that are committed against them. (Submissions 58, 59, 66, 67, 68, 69, 72) The Committee heard this extended to other crimes perpetrated outside of the sex work environment. Ms Reid told the Committee she had been ‘outed’ by police while reporting as a victim of crime. This experience had made her wary to call police at other times. (Transcript of Evidence, p.11) The Committee heard that street based sex workers are even less likely to report violent crimes committed against them for fear of being prosecuted themselves. (Transcript of Evidence, p.12)

The Committee heard evidence from people living with a disability who have great difficulty in procuring sex services through a third party, such as a carer, due to the criminalised model and its associated stigma. Decriminalisation would “make it easier for the industry to meet the needs of those who are vulnerable with special needs”. (Transcript of Evidence, p.111)

Amnesty International argues that criminalisation does not address the gender inequality and discrimination against transgender, gay or bisexual male sex workers. They argue states must combat discrimination and harmful gender stereotypes, empower women and other marginalise groups. (Transcript of Evidence, p.134)

The Committee heard that the Bill would provide rights to sex workers that are not in the interest of building an equitable society. (Transcript of Evidence, p.43) The Committee heard the Australian Christian Lobby’s objection to the amendment of the *Equal Opportunity Act 1984* (EO Act), arguing that the Bill would give a special status to those engaged in sex work which is not available to any other group. The Australian Christian Lobby stated the definition of ‘sex workers’ in the EO Act would prevent employers, accommodation providers, and landlords from being able to refuse employment or other services to someone who either currently or has in the past has provided sexual services for money. (Submission 40, p.23)

Dr Caroline Norma, of RMIT Melbourne and co-editor of *Prostitution Narratives*, challenged the argument that decriminalisation would remove the stigma of sex work and increase safety for sex workers

For you to believe that, you have to believe that legitimising these men and these entrepreneurs somehow leads to women's safety through a reduction in stigma, and I think that argument is fanciful. (Transcript of Evidence, p.46)

Ms Simone Watson of the Nordic Model Australia Coalition (NorMAC) and self-described “prostitution survivor” (Transcript of Evidence, p.119) disagreed that sex work was like any other type of work. She argued sex workers “endure a rate of PTSD comparable with combat veterans and survivors of torture.” (Submission 79, p.3)

#### **7.4 Provide greater opportunities for workers to move in to other fields of work**

Both SIN and the Scarlett Alliance stated their support for the proposed changes within the Bill to the *Spent Convictions Act 2009*.

The Scarlett Alliance argued the decriminalised model enables people to work in other professions and the amendments to the *Spent Convictions Act 2009* would assist women to move from the sex industry into other industries, “I think decriminalising the industry would make that pathway a lot smoother.” (Transcript of Evidence, p.30)

Evidence provided to the Committee indicates that people who have sex work related convictions suffer impediments to their ability to gain alternative employment, which further affects other parts of their life including mental health, finances and study. (Submission 31, p.13) SIN's written submission concluded:

The inclusion of spent conviction clause for sex work related charges has the potential to create positive outcomes for a large number of former sex workers in South Australia by reducing the barriers to fully participating in society. (Submission 30 p.13)

The WWC supports the changes to the *Spent Convictions Act 2009* arguing that it will enable women, with past convictions, to move into new work environments, which may be subject to police clearance requirements. (Transcript of Evidence, p.30)

Both FamilyVoice and the Nordic Model Australia Coalition (NorMAC) are supportive of amendments to the *Spent Convictions Act 2009* as it applies to those who they believe are a "prostituted person." Ms Watson told the Committee that the convictions should not be permitted "for the profiteers and procurers." (Transcript of Evidence, p.129) Ms Philips of FamilyVoice did not believe spent convictions should apply to "those who have been exploiting others" such as a "madam or a pimp." (Transcript of Evidence, p.130)

### **7.5 Impacts upon policing; organised crime, sexual servitude and trafficking**

SAPOL's Licensing Enforcement Branch indicate there are approximately 180 brothels operating in South Australia. The Committee were advised these figures were an indication only and do not include services offered via websites or phone applications. (Transcript of Evidence, p.61)

During their evidence, SAPOL were clear in their position of not commenting on the Bill and decriminalisation, but did acknowledge a need for change to the current system. They told the Committee their position has remained consistent over the years that the current legislation presents "definite challenges and difficulties in policing" and this is reflected in "some of the outcomes in our court matters." SAPOL argued the need for regulation that both protects the "workers in the industry and prevents the infiltration of organised crime". (Transcript of Evidence, p.58) They argued "a completely unregulated environment will only lead us to problems in the future." (Transcript of Evidence, p.58)

However, SAPOL did highlight concerns with changes that could impact upon the effective policing of the sex work industry. SAPOL stated the removal of the power of entry would be a disadvantage to policing the sex services industry.

I think the minute you remove the police, you make people vulnerable to standover tactics and the criminal element. (Transcript of Evidence, p.144)

I do think that we need to give serious consideration to a regulatory model and the powers of the police to retain oversight and powers to enter. (Transcript of Evidence, p.145)

SAPOL also raised issues around probity and the appropriateness of people to operate and/or manage a sexual services business, noting that the Bill does not include probity checking on anyone involved in the industry, which they advocate as necessary. (Transcript of Evidence, p.58) Probity checking they argue prevents workers from being exploited -

...keeping people with poor probity history out of the industry should be a priority, and that's where the focus should be in terms of regulation. (Transcript of Evidence, p.58)

If changes were made to the current legislation, SAPOL indicated a preference for a model based upon the *Tattooing Industry Control Act 2015*, which incorporates provisions relating to outlaw motorcycle gangs and members of declared organisations. This would allow for criminal intelligence to establish whether it was in the public interest for a particular individual to be involved. (Transcript of Evidence, p.59)

It would be mandated that if you were a member of a declared criminal organisation you can't have a role in a brothel. Then there would be a series of offences, which would be agreed, probably by regulation—just as the Tattooing Industry Control Bill has—that would exclude you from involvement. (Transcript of Evidence, p.59)

SAPOL told the Committee it is often the people behind the scenes, such as outlaw motorcycle gangs, who may be a silent partner providing funds, or being paid protection money. (Transcript of Evidence, p.63)

The Law Society of South Australia supports the Bill without amendment. The Law Society representatives argued that decriminalisation creates a safe and secure environment for sex workers to report criminal activity and enables positive relationships with the police. Additionally, the Committee heard that legitimate businesses in Australia are highly regulated by the laws covering crime, occupational health and safety, and immigration and, therefore, a legal framework already exists to address areas of concern. The *Work Health and Safety Act 2012* provides SafeWork SA with extensive powers under that Act - sections 160, 163 and 165 of that Act. (Transcript of Evidence, p.101)

The Law Society also addressed SAPOL's right of entry concerns arguing state legislation provides for SAPOL through "broad and generous provisions with a general search warrant which just requires reasonable suspicion that an offence has been committed." (Transcript of Evidence, p.101)

The Law Society provided a list of the search powers available to the police under nine different State and Commonwealth Acts advising, "while the list is extensive, there may also be further search powers beyond this list".<sup>12</sup> (Law Society of South Australia, Questions on Notice, p.2)

The Committee was also advised that powers of entry exist under Commonwealth legislation such as the *Migration Act 1958*, and that the Australian Federal Police have extensive powers of investigation. (Transcript of Evidence, p.101)

Contrary to SAPOL's evidence, the Committee heard that the Law Society did not see the merit in applying a model similar to that used in the *Tattoo Industry Control Act 2015* arguing this would be counterproductive to the proposed Bill, providing for a sex industry -

...which can be legitimately, lawfully and properly regulated and run according to the standards and practices of any other legitimate business. (Transcript of Evidence, p.103)

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<sup>12</sup> Offences Act 1953 (SA) sections s67; ss68-72;  
Controlled Substances Act 1984 (SA) sections ss50;52;  
Criminal Assets Confiscation Act 2005 (SA) ss 172-177;  
Crimes Act 1914 (Cth) sections s3E – s3F  
Criminal Investigation (Extraterritorial Offences) Act, 1984 (SA) section s54  
Firearms Act 1977 (SA) section s 32(3)  
Migration Act 1958 (Cth) sections s487D – s487E  
Serious and Organised Crime (Control) Act 2008 SA section s33  
Summary Offences Act 1953 (SA) (Indecent Behaviour and Gross Indecency) section s23 ( Law Society Questions on Notice p.2)

FamilyVoice Australia, are concerned that the proposed Bill will remove police powers “to deal with problem brothels and other illegal activities that may be going on.” (Transcript of Evidence, p.123)

The Wilberforce Foundation, a national coalition of lawyers, argued the proposed legislation would make South Australia the “only state or territory which has no controls at all in relation to prostitution.” (Submission 4 p.2) In a subsequent submission they challenged the Law Society of South Australia’s evidence, “that the law should not make moral judgements”, (Transcript of Evidence, pp.104-105) arguing “all laws reflect some moral foundation.” (Additional submission 4b, p.1)

## **7.6 Organised crime, sexual servitude and trafficking**

The Committee heard SAPOL in collaboration with Australian Border Force have discovered evidence of illegal immigrants working in brothels in South Australia. (Transcript of Evidence, p.62) These women are often there voluntarily because they believe a better life is being offered once a debt is recovered but they are being exploited. (Transcript of Evidence, p.63)

SAPOL see the potential for sexual servitude-type offences in South Australia and are in favour of the New Zealand model that prevents temporary work holders from working in the sex industry or being able to set up a brothel. (Transcript of Evidence, p.60)

SAPOL further commented on the prevalence of foreign nationals working in the sexual services industry working in states other than the ones they are residents of, presumably to avoid prosecution -

We were told that, for example, they are flown in, if they come into a city—they would fly them into Adelaide or Melbourne or Perth and they would work there for a few days, and then they would fly them back again. (Transcript of Evidence, p.149)

The Scarlett Alliance told the Committee research and anecdotal evidence amongst their members and member organisations suggests, “large scale organised crime and ‘pimping’ is not a characteristic of the sex industry in Australia.”(Submission 45, p.7) A Report into *Organised Crime and Trafficking in Persons* by Fiona David for the Australian Institute of Criminology (2012) found the assumption that “organised criminal groups are heavily implicated in trafficking persons is an assumption relatively untested.” (Submission 45, p.7)

In their submission, SIN argued anti-trafficking initiatives must be evidence-based, grounded in human rights principles and must not negatively affect the rights of sex workers. (Submission 30, p.12)

The Australian Christian Lobby argue there is evidence to support their claims of sexual servitude, trafficking and organised crime in the Australian sex industries. They refer to evidence presented by the then New South Wales Deputy Police Commissioner, Nick Kaldas to the Legislative Assembly’s Select Committee into the Regulation of Brothels -

There are clearly issues in the industry in terms of servitude, the use of illegal workers and extortion by or involvement of organised crime and outlaw motorcycle gang groups (Submission 40, p.8)

The Coalition Against Trafficking in Women Australia (CATWA) opposes the proposed Bill. While they agree persons engaged in sex work must be decriminalised as a matter of urgency

they argue the proposal to remove section 25 A of the *Summary Offences Act 1953* will allow for pimping and coercion into prostitution to be legal. (Submission 23, p.2)

FamilyVoice Australia claimed that sex trafficking is prevalent in Adelaide, stating this is a problem for Asian women in the sex industry across the nation. (Transcript of Evidence, p.128)

The Federal Minister for Justice, the Hon. Michael Kennan MP, in correspondence dated 13 October 2015, provided the Hon. J.M.A Lensink with the following information in relation to human trafficking for the purpose of sexual exploitation -

Due to the clandestine nature of the crime type, there is little reliable data about the nature and extent of human trafficking at a global, regional or domestic level. However, when compared to global trends, it is clear that instances of human trafficking remain relatively uncommon in Australia. Opportunities to traffic people into, or exploit people within, Australia are limited because of our strong migration controls, geographic isolation, and high degree of regulation, compliance and enforcement.

Since the Australian Government strategy to combat human trafficking and slavery commenced on 1 January 2004, as at 31 August 2015 279 suspected victims of human trafficking, slavery or slavery-like practices such as forced labour and forced marriage have been identified by the Australian Federal Police (AFP) and referred to the Australian Government Support for Trafficked People Program. Of the 279, 189 females and two males were referred for suspected exploitation in the sex industry. The majority of suspected victims were referred in New South Wales and Victoria, reflecting the population concentration and the relative size of industry in these jurisdictions.

Information available to the Australian Government agencies responsible for combating human trafficking and slavery indicates that the incidence of human trafficking for sexual exploitation in South Australia remains low. From 1 July 2012 to 31 August 2015, the AFP received three referrals for suspected sexual exploitation matters in South Australia, one of which was accepted for further investigation. One matter was not accepted for investigation as no victim was identified. The other matter was not accepted for investigation as the AFP's evaluation revealed no evidence that an offence had occurred.

### ***7.7 The perception of criminal activity within the sexual services industry:***

The Committee did not hear any evidence that confirmed criminal activity within the sexual services industry in South Australia. The Committee heard people perceive there to be risks with brothels - some customers are risky people; there is a risk to the community through organised crime; through drug use; risks to children; vulnerable people and sexual servitude. (Transcript of Evidence, p.150)

SAPOL argued that as a primarily cash industry, it is vulnerable to money laundering (Transcript of Evidence, p.143) and people within the industry are vulnerable to standover tactics. (Transcript of Evidence, p.144)

### ***7.8 Human Rights***

The Committee heard the Australian Government and the United Nations recognise sex workers as a group in need of human rights and anti-discrimination protection. Sex workers are recognised by the Australian Government's National Strategies, and globally, as a community that experiences unacceptable levels of discrimination and denial of human rights. (Submission 30, p.13)



Amnesty International informed the Committee that the decriminalisation of sex work is an important step toward addressing human rights issues:

...governments need to make sure that the system respects the human rights of sex workers. Sex workers still have to have control over their health and their workplace like any other worker in a legalised industry. (Transcript of Evidence, p.135)

SWAGGERR, a South Australian sex worker organisation, argue the current *Criminal Law Consolidation Act 1935* and the *Summary Offences Act 1953* are a breach of sex workers human rights. (Submission 33, p.2)

The YWCA Adelaide, representing a coalition of feminist women's organisations including Zonta International (SA and NT), Soroptimist International SA, and YWCA Australia, told the Committee these organisations support the decriminalisation of sex work, arguing it goes toward "safeguarding the human rights of sex workers". (Transcript of Evidence, p.153) They argue those in the sex industry are best placed to advise on health, workplace rights and gender equality. (Transcript of Evidence, p.155)

The proposed bill will provide human rights and protections for trans sex workers, often the most marginalised, stigmatised and discriminated sector in the community. (Submission 51)

Ms Watson of NorMAC, argued the proposed Bill is an open invitation to the ongoing human rights abuses of the sex trade. The Bill, she argues, will "entrench even further normalisation of violence to women in Australia." (Transcript of Evidence, p.121) She told the Committee having pimps, procurers and profiteers is not a "woman's human right". (Transcript of Evidence, p.121)

The Wilberforce Foundation argue the Bill will lead to the exploitation and traumatising of women, an increase in human trafficking of women and probably children and the undermining of sound Australian values. (Submission 4, p.1)

## **7.9 Health**

In the area of health, the Committee heard from physicians from the Royal Adelaide Hospital's Sexual Health Clinic 275 and SA Health's Communicable Disease's Control Branch.

The Committee heard there was some evidence of several health benefits of decriminalisation particularly better access to health promotion programs, better condom carriage and use, and some evidence of better general health. There was no evidence of negative health outcomes from decriminalisation. The Committee heard that the legal status of sex workers affects condom use by sex workers:

Where sex workers themselves, or clients of sex workers, are criminalised, rates of violence against sex workers appear higher. Where higher violence occurs, there is more unprotected sex and there is more forced unprotected sex. (Transcript of Evidence, p.75)

The Committee was told between 2006 and 2010, Clinic 275 saw an increase in gonorrhoea in sex workers, heterosexual men and women, which correlated with an increase in policing and the seizure of condoms as evidence of sex work.

This peak coincided with a peak in charges against sex workers by South Australian police occurring in 2007 and 2008. (Transcript of Evidence, p.75)

The Committee heard that there are approximately twenty-five individuals (at any one time) who work directly on the street. While this is a small percentage of the sex industry in South Australia, they are the sex workers who are at the highest risk. (Transcript of Evidence, p.73) The Committee heard that ‘safe houses’, similar to those in New South Wales, provide safe places where street based workers can take clients; have access to condoms; healthcare professionals and other professional services, and were seen as having significant benefits to the health of sex workers and their clients -

What that does is to allow sex workers not to work in a brothel environment, which some sex workers choose not to do, particularly the highest-risk sex workers choose it, so that would benefit the highest-risk sex workers. (Transcript of Evidence, p.79)

Overall, the Committee heard the benefits of decriminalisation include “better access to health care, better access to education and safer sex peer-led education, which improve sexual health for sex workers and then the community as well.” (Transcript of Evidence, p.79)

Both SIN and the Scarlett Alliance argue the decriminalisation model provides better access to health promotion and a best practice approach to achieving positive public health outcomes and low rates of STI’s and HIV. This is recognised by Australia’s National Health Strategies and the University of New South Wales Kirby Institute’s annual *Surveillance Report into HIV, Viral Hepatitis and Sexually Transmissible Infection in Australia*. (Submission 45, p.13, Submission 30, p.14, Submission 32)

The Committee was informed that the World Health Organisation position on sex work is that all countries should work towards decriminalisation of sex work. Additionally, it argues that the police practice of using the possession of condoms as evidence of sex work should be eliminated. UNAIDS and the UN Development Program share the same position, and state that there is no evidence that criminalisation of clients reduces HIV transmission or improves quality of life of sex workers. It is argued that licensing and regulatory systems are not effective in preventing HIV epidemics among sex workers and that mandatory STI and HIV testing diverts resources from effective HIV prevention. (Transcript of Evidence, p.76-77)

The Australian Federation of AIDS Organisations (AFAO) strongly supports the decriminalisation of sex work across all Australian jurisdictions. They argue legal regimes that criminalise sex work infringe human rights, compromise public health and are a barrier to a more effective HIV response. (Submission 22)

The Committee heard that there is no evidence that decriminalisation would see an increase in the size of the sex industry.

A large representative national sample of over 8,000 Australian men which was published this year [2016] found 2.2 per cent of men reported paying for sex in the last 12 months, and there was no statistical difference between the state or territory regardless of the legal status of sex work. (Transcript of Evidence, p.84)

Evidence provided by Mrs Francis from the Australia Christian Lobby and the former West Australian MLA, Mr Peter Abetz, refers to international research conducted in 2003 involving 850 people across nine countries. This research showed high rates of sexual harassment and violence with many sex workers meeting the criteria for Post-Traumatic Stress Disorder (PTSD). A 2010 survey conducted by Law and Sexworker Health (LASH) UNSW found 10 percent of sex workers in Perth had extreme stress related to drug use. The same survey found intravenous drug use was high amongst Sydney’s street sex workers (Submission 40, p.6, Submission 20, p.6)

## 7.10 Local Government

The Local Government Association of South Australia (the LGA) declined the Committee's request to appear and give evidence before it. The LGA belatedly provided the Committee with a copy of correspondence concerning the Bill, which had been sent to two Members of Parliament.

The LGA correspondence states that it has previously "provided comment on a number of iterations of this Bill" and raises two issues with the Bill "on behalf of the Local Government Sector", namely the location of sex-work premises in particular areas and the regulation of soliciting.

The LGA is concerned that the existing provisions [within *the Development Act 1993*] are not sufficiently robust to deal with these matters and seeks an amendment that provides a clearer regulatory framework in relation to sex-work

In relation to the use of premises for sex work "near schools and other sensitive land use areas", the LGA remain concerned that the proposed amendments to the Summary Offences Act in this 2015 Bill do not include the insertion of such restrictions.

And,

Councils have a limited regulatory role in relation to 'on-street' activities and do not want to have to take a regulatory role in the management of street soliciting through the limited powers of by-laws. These are matters appropriately left to the police or other regulatory agencies.

In addition to the LGA, the Committee received written submissions from three local councils that specifically addressed the provisions of the Bill. The City of Salisbury provided to the Committee correspondence it had sent to the LGA. The correspondence states that -

Council considers that proper protection for sex workers is appropriate and that an improvement to the current situation is needed." (Submission 2, p.2)

The Council argued that the LGA should provide a submission to the Committee on the Bill. Further, that any submission from the LGA should use the *Sex Services Premises - Planning Guidelines December 2004* (NSW) as "a resource of information on the matter and legislative responses by Government to the decriminalisation of Brothels in NSW" (Submission 2, p.1) and that,

additional legislation [could be] enacted [and] be based on the *Brothels Act 2007* (NSW) which sets the evidentiary requirements that Councils would be required to use to control unauthorised activities. (Submission 2, pp.1-2)

Further points raised in the City of Salisbury's submission include:

- brothels only being permitted to operate in industry zones and be prevented from operating in residential zones;
- brothels should be prevented from operating certain distances from sensitive land use areas, irrespective of the zoning;
- the prevention of converting vacant shops and buildings into brothels within Centre Zones;
- planning controls to accommodate development approvals of brothels, and the creation of legislation that allows unauthorised brothels to be shut down;
- escort agencies and entertainment premises (not referenced in the Bill) should be considered in the planning legislation;

- the preparation of a Ministerial DPA to identify appropriate policy, zones, and distances from sensitive land uses and locations to ensure consistent policies; and
- the development of a Code of Practice by SA Health or SafeWork SA for safe operations with the industry. (Submission 2, p.1-2)

The City of Tea Tree Gully is opposed to the Bill in its current format arguing the Bill would place pressure on councils to -

- Effectively become the regulator of brothels and street prostitution, given that decriminalisation is the proposed model;
- Allocate resources to ensure compliance in an area which has traditionally been the responsibility of the police;
- Assume responsibility for brothels even though councils do not have power to regulate any illegal activity within those brothels (beyond planning regulations and approvals);
- Regulate public soliciting by prostitutes (street prostitution, which the bill allows for in an unfettered manner);
- Regulate approval of brothels (with council decisions having to be made purely on planning matters, potentially disregarding concerns of local residents); and
- Fight legal battles at ratepayers' cost against brothel owners who do not respect conditions placed on any planning application. (Submission 1)

The City of Marion is also opposed to the Bill in its current form and their submission reiterates the arguments about development planning outlined by both the City of Salisbury and City of Tree Gully. The City of Marion raises concerns about the planning system, the *Development Act 1993* and the zoning of premises used for the purposes of sex work. (Submission 14)

The Committee suggests that the new State Planning Commission consider best practice planning rules that can be used by Local Government in the event that this Bill is passed.

### **7.11 Preference for other models of legislation or criminalisation**

A number of submissions and witnesses were in favour of what is referred to as the 'Nordic' or 'Swedish' Model (or Sex Buyer Law). The basic premise of the 'Nordic Model' is that purchaser of sexual services is criminalised.

The Committee heard from a number of advocates for the Nordic Model. Scandinavian Human Rights Lawyers, a Christian Swedish law firm, gave evidence in support of the Nordic Model -

...when it comes to trafficking in prostitution, we found it very encouraging to see the conclusion of the report where it is said that all member states in the Council of Europe are encouraged and encouraged to consider the Nordic model and the Nordic approach to the criminalisation of the purchase of sexual services because the Nordic model, according to this European report, is seen as the most effective tool to prevent and combat human trafficking. (Transcript of Evidence, p.83)

The Australian Christian Lobby (ACL) advised the Committee of their support for the 'Nordic Model'. (Submission 40, p.23) Mrs Francis from the ACL believes the starting point towards developing effective public policy towards prostitution is recognising the drivers of the industry. (Submission 40, p.23)

This works towards an eventual end to prostitution, supporting the women who are in it in the meantime and teaching men that buying sex isn't acceptable. (Transcript of Evidence, p.44)

A coalition of lawyers referred to as the Wilberforce Foundation argued the “Bill in its current form should be rejected and the Nordic Model Bill should be adopted.” (Submission 4, p.9) In a subsequent submission they challenged the Law Society of South Australia’s evidence “that the law should not make moral judgements” (Transcript of Evidence, pp.104-105) arguing, “all laws reflect some moral foundation” and reiterated their position in favour of the Nordic Model. (Additional submission 4b, p.1)

Opponents of the ‘Nordic Model’ argue this model of legislation poses the same unsafe work practices for sex workers as criminalisation. Laws against buying sex mean that sex workers have to take more risks to protect buyers from detection by the police. Consequently, this drives the sex industry underground and leaves sex workers at a greater risk of violence. (Submission 30, p.6-7)

Sex workers are negotiating services in places that are denoted by their clients rather than themselves. Their clients are stalked by police, and so sex workers are having to move around and work in very unsafe environments. Condom usage and things like that, the negotiations around all that, are very limited and usually only happen within the service, which has many adverse side effects as well. (Transcript of Evidence, p.6)

The Committee heard evidence suggesting that the ‘Nordic Model’ would criminalise some of the most disadvantaged members of our society.

If we are thinking about people living with a disability or other vulnerable people who are needing to reach out to seek some sexual intimacy or some skin-to-skin contact that they are not otherwise getting in other ways, then I think that those sorts of laws are not going to help those people at all. (Transcript of Evidence, p.117)

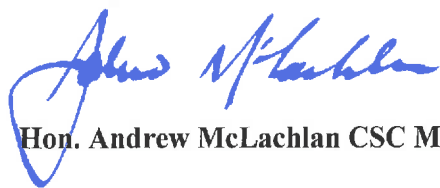
## **9. RECOMMENDATION**

After considering the evidence and submissions placed before it, the Committee recommends the Bill pass without amendment.

Hon. Michelle Lensink MLC  
**Chairperson**  
30 May 2017

**DISSENTING STATEMENT FOR THE  
HON. A. L. MCLACHLAN CSC MLC AND THE HON. R. L. BROKENSHIRE MLC**

Considering the evidence and submissions, it is clear that existing legislation for sex work is outdated. In light of this, we both support the body of the report the Committee is presenting, however the evidence, in our opinion, did not successfully make the case for decriminalisation. The model that best appeared to deal with sex work in the 21<sup>st</sup> Century was the Nordic model, and we are of the view that the Nordic Model provides a better solution than is proposed in the Bill presented.



**Hon. Andrew McLachlan CSC MLC**



**Hon. Robert Brokenshire MLC**

**Statement by the Hon. Tung Ngo MLC:**

**Select Committee on the Statute Amendment (Decriminalisation of Sex Work) Bill 2015 - May 2017**

The Statutes Amendment (Decriminalisation of Sex Work) Bill 2015 (hereafter referred to as “the Bill”) was referred to the Select Committee on the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015 (hereafter referred to as “the Committee”) for further investigation.

I accept in its entirety, the evidence provided to the Committee which is contained in its Report.

I accept that current laws regulating sex work are outdated and need changing. However, I don't support the Committee Report's final recommendation that supports the Bill in its current form.

I believe that the following changes must be considered to the Bill in its current form:

- Current prohibitions on street work should remain within the Summary Offences Act.
- State planning laws should be changed to outline the definition of a brothel, the evidentiary requirements to prove one is operating, as well as where they can operate.
- Brothels should not be located less than 200 metres from a place of worship, school or children's centre. Furthermore, sex workers working from a residential building should be registered as living at their address, work only in tandem with another sex worker, and not have any advertising on their property to ensure discreetness of their work.
- Police should retain the right to enter brothels.
- A register of brothel owners should be established and maintained, including a “fit and proper persons” test.



**Hon Tung Ngo MLC**  
Member of the Legislative Council

29<sup>th</sup> May 2017



**EXTRACT FROM THE MINUTES OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL FOR WEDNESDAY, 1 JULY 2015.**

Statutes  
Amendment  
(Decriminalisation  
of Sex Work) Bill.

9. The Hon. J.M.A. Lensink, by leave, moved Notice of Motion (Private Business) No. 3 in an amended form, viz.: That she have leave to introduce 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.

Question put and passed.

Bill introduced and read a first time.

The Hon. J.M.A. Lensink then moved - That the Bill be now read a second time.

On motion of the Hon. T. J. Stephens, the debate was adjourned until Wednesday, 29 July 2015.

**EXTRACT FROM THE MINUTES OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL FOR WEDNESDAY, 20 JULY 2015.**

Statutes  
Amendment  
(Decriminalisation  
of Sex Work) Bill.

23. On the Order of the Day being read for the adjourned debate on the question - That the Statutes Amendment (Decriminalisation of Sex Work) Bill be now read a second time:

Debate resumed.

On motion of the Hon. D. W. Ridgway, the debate was adjourned until Wednesday, 9 September 2015.

**EXTRACT FROM THE MINUTES OF PROCEEDINGS OF THE LEGISLATIVE COUNCIL FOR WEDNESDAY, 9 SEPTEMBER 2015.**

18. Ordered - That the adjourned debate on the question - That the Statutes Amendment (Decriminalisation of Sex Work) Bill be now read a second time - be now resumed.

Statutes  
Amendment  
(Decriminalisation  
of Sex Work) Bill.

Debate resumed.

Question put.

Council divided:

Ayes, 13

The Hon. J. A. Darley  
The Hon. J.S.L. Dawkins  
The Hon. T. A. Franks  
The Hon. J. M. Gazzola  
The Hon. I. K. Hunter  
The Hon. G. A. Kandelaars  
The Hon. K. J. Maher  
The Hon. A. L. McLachlan  
The Hon. M. C. Parnell  
The Hon. D. W. Ridgway  
The Hon. K. L. Vincent  
The Hon. S. G. Wade  
The Hon. J.M.A. Lensink (Teller)

Noes, 6

The Hon. R. L. Brokenshire  
The Hon. D.G.E. Hood  
The Hon. J. S. Lee  
The Hon. R. I. Lucas  
The Hon. T. T. Ngo  
The Hon. T. J. Stephens (Teller)

So it was resolved in the affirmative.

Bill read a second time.

The Hon. S. G. Wade, by leave, moved Contingent Notice of Motion No. 2 standing in his name in an amended form, viz.:

- I. That the Bill be referred to a Select Committee of the Legislative Council for inquiry and report.
- II. That the Select Committee consist of seven Members and that the quorum of Members necessary to be present at all meetings of the Committee be fixed at three Members and that Standing Order No. 389 be so far suspended as to enable the Chairperson of the Committee to have a deliberative vote only.
- III. That this Council permits the Select Committee to authorise the disclosure or publication, as it sees fit, of any evidence or documents presented to the Committee prior to such evidence being presented to the Council.
- IV. That Standing Order No. 396 be suspended to enable strangers to be admitted when the Select Committee is examining witnesses unless the Committee otherwise resolves, but they shall be excluded when the Committee is deliberating.

Debate ensued.

The Hon. R. I. Lucas moved to amend the motion in Paragraph I, after the word "Bill" by inserting the following: "and any other related matter".

Question - That the amendment moved by the Hon. R. I. Lucas to the motion moved by the Hon. S. G. Wade be agreed to - put.

Council divided:

Ayes, 6	Noes, 13
The Hon. R. L. Brokenshire	The Hon. J. A. Darley
The Hon. D.G.E. Hood	The Hon. J.S.L. Dawkins
The Hon. J. S. Lee	The Hon. T. A. Franks
The Hon. D. W. Ridgway	The Hon. J. M. Gazzola
The Hon. T. J. Stephens	The Hon. I. K. Hunter
The Hon. R. I. Lucas (Teller)	The Hon. G. A. Kandelaars
	The Hon. J.M.A. Lensink
	The Hon. K. J. Maher
	The Hon. A. L. McLachlan
	The Hon. T. T. Ngo
	The Hon. M. C. Parnell
	The Hon. K. L. Vincent
	The Hon. S. G. Wade (Teller)

So it passed in the negative.

The Hon. R. I. Lucas moved to amend the motion in Paragraph II by leaving out "three" and inserting "four".

Question - That the amendment moved by the Hon. R. I. Lucas to the motion moved by the Hon. S. G. Wade, be agreed to - put.

Council divided:

Ayes, 8	Noes, 11
The Hon. R. L. Brokenshire	The Hon. J.S.L. Dawkins
The Hon. J. A. Darley	The Hon. T. A. Franks
The Hon. D.G.E. Hood	The Hon. J. M. Gazzola
The Hon. J. S. Lee	The Hon. I. K. Hunter
The Hon. T. T. Ngo	The Hon. G. A. Kandelaars
The Hon. D. W. Ridgway	The Hon. J.M.A. Lensink
The Hon. T. J. Stephens	The Hon. K. J. Maher
The Hon. R. I. Lucas (Teller)	The Hon. A. L. McLachlan
	The Hon. M. C. Parnell
	The Hon. K. L. Vincent
	The Hon. S. G. Wade (Teller)

So it passed in the negative.

Question - That the motion moved by the Hon. S. G. Wade be agreed to - put.

Council divided:

Ayes, 16

The Hon. J. A. Darley  
The Hon. J.S.L. Dawkins  
The Hon. B. V. Finnigan  
The Hon. T. A. Franks  
The Hon. J. M. Gazzola  
The Hon. I. K. Hunter  
The Hon. G. A. Kandelaars  
The Hon. J.M.A. Lensink  
The Hon. R. I. Lucas  
The Hon. K. J. Maher  
The Hon. A. L. McLachlan  
The Hon. T. T. Ngo  
The Hon. M. C. Parnell  
The Hon. D. W. Ridgway  
The Hon. K. L. Vincent  
The Hon. S. G. Wade (Teller)

Noes, 4

The Hon. R. L. Brokenshire  
The Hon. D.G.E. Hood  
The Hon. J. S. Lee  
The Hon. T. J. Stephens (Teller)

So it was resolved in the affirmative.

The Hon. S. G. Wade then moved - That the Select Committee consist of the Hon. R. L. Brokenshire, the Hon. J. A. Darley, the Hon. T. A. Franks, the Hon. J. M. Gazzola, The Hon. J.M.A. Lensink, the Hon. A. L. McLachlan and The Hon. T. T. Ngo. Select Committee appointed.

Question put and passed.

The Hon. S. G. Wade moved - That the Select Committee have power to send for persons, papers and records, to adjourn from place to place and report on Wednesday, 18 November 2015.

Question put and passed.

CLERK OF THE LEGISLATIVE COUNCIL.

## APPENDIX 1- WITNESSES

### SELECT COMMITTEE ON THE STATUTES AMENDMENT (DECriminalISATION OF SEX WORK) BILL 2015

#### SCHEDULE OF WITNESSES (In order of appearance)

<b>Witness</b>	<b>Page No.</b>
Ms Sharon Jennings, Manager, Sex Industry Network	
Ms Ari Reid, Sex Industry Network	1-14
Ms Marie Boland, Executive Director, SafeWork SA	15-24
Ms Sandra Dann, Director, Working Women's Centre	25-31
Ms Jules Kim, Chief Executive Office, Scarlett Alliance	33-42
Mrs Wendy Francis, Queensland Director, Australian Christian Lobby	
Dr Caroline Norma, RMIT University	43-56
Assistant Commissioner Linda Fellows, South Australia Police	
Senior Sergeant Julie Foley, South Australia Police	57-69
Dr Russell Waddell, Senior Sexual Health Consultant, Communicable Disease Control, SA Health	
Dr Alison Ward, Consultant Sexual Health Physician, Head of Unit, Clinic 275, Royal Adelaide Hospital	71-80
Ms Rebecca Ahlstrand, Legal Counsel, Scandinavian Human Rights Lawyers	
Ms Ruth Nordström, President and Senior Legal Counsel, Scandinavian Human Rights Lawyers	81-98
Mr David Caruso, President, The Law Society of South Australia	
Ms Leah Marrone, President, Women Lawyers Committee, The Law Society of South Australia	
Ms Taruna Heuzenroeder, Women Lawyers Committee, The Law Society of South Australia	99-108
Mr Ralph Brew	
Witness B	
Witness A	109-118
Ms Simone Watson, Nordic Model Australia Coalition	
Mrs Ros Phillips, FamilyVoice Australia	119-130
Ms Vicki Jacobs, Board Director, Amnesty International	131-138
Chief Superintendent Thomas Osborne, Officer in Charge, Serious Crime Coordination Branch, South Australia Police	
Detective Chief Inspector Denise Gray, Officer in Charge, Licensing and Enforcement Branch, South Australia Police	139-151
Ms Dianne Potter, Past President, Soroptimist International South Australia	
Ms Claire Tatzzo, Communications and Policy Officer, YWCA Adelaide	153-158
Ms Sharon Jennings, Manager, Sex Industry Network	175-182

**APPENDIX 2 - SUBMISSIONS**

**SELECT COMMITTEE ON THE STATUTES AMENDMENT  
(DECriminalISATION OF SEX WORK) BILL 2015**

**SCHEDULE OF SUBMISSIONS**

1	City of Tea Tree Gully	51	Xavier Miles
2	City of Salisbury	52	New Zealand Prostitutes Collective
3	Persons Against Non-State Torture	53	SWOT NT
4	Wilberforce Foundation (plus additional)	54	Lets Do Good Inc
5	Marie Hume	55	The Law Society of SA
6	Luke	56	Name redacted
7	Kate	57	Bella
8	Chris M	58	Hadrian
9	Jai Heward	59	Leo
10	Amanda	60	Jen
11	Les Birch	61	Julian
12	Michele Mann	62	Anonymous
13	The Salvation Army	63	Pippa
14	City of Marion	64	Heather
15	Jewish Adelaide Feminist Lesbian Group	65	Holly
16	Family Voice Australia	66	Heidi
17	Elena Jefferys	67	Anthony
18	Jean	68	Jo
19	“R”	69	Paige
20	Peter Abetz	70	Sue
21	Madeline	71	Darcy
22	Australian Federation of AIDS Organisations	72	Evan
23	Coalition Against Trafficking in Women Australia	73	Barry
24	Erica	74	Anon
25	Claire	75	Roxana Baratosy
26	Anthony	76	Penny
27	Respect Inc.	77	Australian Services Union
28	Jeanette Mosey	79	Sister Survivor
29	Alan Fairley	80	Roscoe Hilton
30	Sex Industry Network	81	K.F.
31	Relationships Australia	82	Paulette
32	Working Women’s Centre	83	David
33	SWAGGERR	84	Claire
34	YWCA	85	Touching Base
35	SA Unions	86	Advocates International
36	“A”	87	Linda
37	Ricky Madisson		
38	Tim Barritt		
39	Dr Judith Preppard		
40	Australian Christian Lobby		
41	“E”		
42	Fighting for Justice Foundation (plus additional)		
43	Name redacted		
44	Mel		
45	Scarlet Alliance		
46	Dr Helen Pringle		
47	Collective Shout		
48	David		
49	Jason Virgo		
50	Ru Rua Group Management Association		

South Australia

## **Statutes Amendment (Decriminalisation of Sex Work) Bill 2015**

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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- 2 Amendment provisions

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  - 68AA Provision of commercial sexual services to children
- 5 Amendment of section 270—Punishment for certain offences
- 6 Variation of Schedule 11—Abolition of certain offences

### Part 3—Amendment of *Equal Opportunity Act 1984*

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- 8 Amendment of section 85T—Criteria for establishing discrimination on other grounds
- 9 Amendment of section 85U—Application of Division
- 10 Amendment of section 85ZA—Application of Division
- 11 Amendment of section 85ZB—Discrimination by associations
- 12 Amendment of section 85ZD—Application of Division
- 13 Amendment of section 85ZF—Discrimination by person disposing of interest in land
- 14 Amendment of section 85ZG—Discrimination in provision of goods and services
- 15 Amendment of section 85ZH—Discrimination in relation to accommodation
- 16 Amendment of section 85ZI—Charities
- 17 Amendment of section 85ZK—Measures intended to achieve equality

### Part 4—Amendment of *Spent Convictions Act 2009*

- 18 Insertion of section 16A
  - 16A Certain convictions in relation to sex work taken to be spent

### Part 5—Amendment of *Summary Offences Act 1953*

- 19 Amendment of section 4—Interpretation
- 20 Amendment of section 21—Permitting premises to be frequented by thieves etc
- 21 Repeal of sections 25, 25A and 26
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### Part 6—Amendment of *Return to Work Act 2014*

- 23 Amendment of section 4—Interpretation
- 24 Insertion of section 6A
  - 6A Additional provisions in respect of sex work

### Schedule 1—Transitional provision

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

The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Statutes Amendment (Decriminalisation of Sex Work) Act 2015*.

### 2—Amendment provisions

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—Insertion of section 68AA

After section 68 insert:

#### **68AA—Provision of commercial sexual services to children**

(1) A person must not provide commercial sexual services to a child.  
Maximum penalty: 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 he or she provided commercial sexual services had attained 18 years of age.

### 5—Amendment of section 270—Punishment for certain offences

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

### 6—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 *Equal Opportunity Act 1984*

### 7—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;



## **8—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 he or she treats another unfavourably because the other is, or has in the past been, a sex worker; or

(b) if he or she 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 he or she 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.

## **9—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

## **10—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

## **11—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,

## **12—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

## **13—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

**14—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

5 **15—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:

10 (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.

15 **16—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

**17—Amendment of section 85ZK—Measures intended to achieve equality**

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

20 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

25 **Part 4—Amendment of *Spent Convictions Act 2009***

**18—Insertion of section 16A**

After section 16 insert:

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

30 (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—

35 *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*

### 19—Amendment of section 4—Interpretation

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

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

Section 21—delete ", prostitutes" wherever occurring

### 21—Repeal of sections 25, 25A and 26

Sections 25, 25A and 26—delete the sections

### 22—Repeal of Part 6

Part 6—delete the Part

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

### 23—Amendment of section 4—Interpretation

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

or section 6A

### 24—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—

(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

- 5
- (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;
- (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;
- 10
- (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);
- 15
- (d) the regulations may exempt a specified class of persons or bodies from a specified provision of this Act.

## 20 **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.
- 25 (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—**

30 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—
    - (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—
- 40 ***employer*** has the same meaning as in the *Return to Work Act 2014*;

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

Table 1 Legal status of the sex industry in Australia by state/territory and sex work type								
	NSW	Vic	Qld	WA*	SA	Tas	ACT	NT
Street-based work	Soliciting is illegal in certain areas (near or within view of a dwelling, school, church or hospital) ( <i>Summary Offences Act</i> , ss 19, 19A)	Illegal ( <i>Sex Work Act 1994</i> , s 13(2))	Illegal ( <i>Prostitution Act 1999</i> , s 73(1))	Illegal ( <i>Prostitution Act 2000</i> , ss 5, 6)	Illegal ( <i>Summary Offences Act 1953</i> , s 25)	Illegal ( <i>Sex Industry Offences Act 2005</i> , s 8(1))	Illegal ( <i>Prostitution Act 1992</i> , s 19(1))	Illegal ( <i>Prostitution Regulation Act 2004</i> )
Brothel work	Legal to run a brothel with appropriate planning permission. Act does not state that it is a crime to work as a sex worker in a brothel without planning permissionb ( <i>Restricted Premises Act 1943</i> , s 7(1))	Brothels must be licensed and working within the licence conditions to operate legally ( <i>Sex Work Act 1994</i> , s 22(1)).  It is a crime to live partially or wholly off the earnings of sex work unless working for legal premises (ie licensed, or exempt from requiring a licence but registered) ( <i>Sex Work Act 1994</i> , s 10)	Brothels must be licensed and in accordance with planning laws ( <i>Prostitution Act 1999</i> , s 66). It is unlawful to work as a sex worker in premises other than a licensed brothel or contrary to brothel licence, unless exempt from needing a licence (see private work below) ( <i>Criminal Code 1899</i> , s 229C)	Illegal to run a brothel ( <i>Criminal Code Compilation Act 1913</i> , Division 190, s 1(a)).  Also illegal to live partially or wholly off the earnings that the person knows are the earnings of prostitution ( <i>Criminal Code Act Compilation 1913</i> , s 190(3))	It is a crime to manage or keep a brothel, or to receive payment in a brothel for sex work ( <i>Summary Offences Act 1953</i> , s 28).  Illegal to live partially or wholly off the earnings of the prostitution of another person ( <i>Summary Offences Act 1953</i> , s 26)	Illegal to run a brothel. Act does not state that it is illegal to work as a sex worker in a brothel ( <i>Sex Industry Offences Act</i> , s 4)	Legal to run a brothel, but must be registered and based in prescribed locations. Act does not state that it is a crime to work as a sex worker in a brothel that is not registered or outside the prescribed locations of Mitchell and Fyshwick ( <i>Prostitution Act 1992</i> , s 18(1); <i>Prostitution Act Regulation 1993</i> , s 1(4); see also <i>Prostitution Act</i> , s 12(1))	Illegal to run a brothel. Act does not state that it is a crime to work as a sex worker in a brothel ( <i>Prostitution Regulation Act 2004</i> , s 4)
Escort agency work	Not mentioned within the <i>Summary Offences Act 1988</i> or <i>Restricted Premises Act 1943</i>	Escort agencies must also be licensed to operate legally ( <i>Sex Work Act 1994</i> , s 22(1))	Clients of a social escort service must be informed that the service does not include prostitution ( <i>Prostitution Act 1999</i> , s 96B). In addition, escort services cannot be advertised as including sexual services ( <i>Prostitution Act 1999</i> , s 96A)	Not illegal to conduct an escort service but illegal to live off the earnings. See ( <i>Criminal Code Act Compilation 1913</i> , s 190(3)) above	See above. Act does not state that it is illegal to work as a sex worker in an escort agency ( <i>Summary Offences Act 1953</i> , s 26)	Illegal to run an escort agency. Act does not state that it is a crime to work as a sex worker in an escort agency ( <i>Sex Industry Offences Act</i> , s 4)	Legal to run an escort agency, but must be registered. Act does not state that it is a crime to work as a sex worker in an unregistered escort agency ( <i>Prostitution Act 1994</i> , s 12(1))	It is an offence to carry on an escort agency business unless they hold an operator's licence ( <i>Prostitution Regulation Act 2004</i> , s 6(1)). Act does not state that it is a crime to work as a sex worker in an unlicensed escort agency
Private work/sole operators	Not mentioned within <i>Summary Offences Act 1988</i>	Small business operators (two people working separately or jointly) and solo workers are exempt from requiring a licence to operate legally but still need to register their service. Small business operators also need a planning permit for their premises if they are providing services there ( <i>Sex Work Act 1994</i> , ss 23, 24)	Legal for a person to work solely from a premise without a licence	Nothing in the Act specifically about private workers but see ( <i>Criminal Code Act Compilation 1913</i> , s 190(3)) above	Nothing in the Act specific to private workers	Up to two sex workers can work together but cannot manage or employ each other ( <i>Sex Industry Offences Act 2005</i> , s 3(1))	Legal but private workers still need to register ( <i>Prostitution Act 1994</i> , s 12(1))	Individual workers cannot work from the same premises from which they organise their business; however, an individual 'escort' who is working on their own does not need to have a licence or be registered with police ( <i>Prostitution Regulation Act 2004</i> , s 6(4))
Regulatory authority	Local councils approve business applications (see <i>Restricted Premises Act 1943</i> , s 17(1) above)	Business Licensing Authority grants licences for brothels and escort services and maintains the register of private workers	Prostitution Licensing Authority grants licences to brothels	WA Police	SA Police	Tasmania Police	The Office of Regulatory Services is responsible for registering brothels, escort agencies and sole operators	Director-General of Licensing (formerly the Northern Territory Licensing Commission) grants licences to escort agencies. All staff of escort agencies must be registered with NT Police and receive a certificate from the Police Commissioner
Principal legislation	<i>Summary Offences Act 1988</i> , <i>Restricted Premises Act 1943</i>	<i>Sex Work Act 1994</i>	<i>Prostitution Act 1999</i> , <i>Criminal Code 1899</i>	<i>Prostitution Act 2000</i> , <i>Criminal Code Act Compilation 1913</i>	<i>Summary Offences Act 1953</i>	<i>Sex Industry Offences Act 2005</i>	<i>Prostitution Act 1992</i>	<i>Prostitution Regulation Act 2004</i>

**APPENDIX 4**

\*Table 1, Legal status of the sex industry in Australia by state/territory and sex work type' in Renshaw, L *et al Migrant Sex Workers in Australia*, Australian Institute of Criminology, 2015, pp. 7-8.