

South Australia

# **Sex Work Industry Bill 2011**

A BILL FOR

An Act to decriminalise prostitution and regulate the sex work industry; to amend the *Criminal Law Consolidation Act 1935*, the *Equal Opportunity Act 1984*, the *Fair Work Act 1994*, the *Summary Offences Act 1953* and the *Workers Rehabilitation and Compensation Act 1986*; and for other purposes.

---

## **Contents**

### **Part 1—Preliminary**

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 References to person involved in operation of sex business
- 5 References to premises used on systematic or regular basis for sex work

### **Part 2—Decriminalisation of prostitution**

- 6 Offences relating to prostitution abolished and convictions taken to be spent
- 7 Contracts for commercial sex

### **Part 3—Regulation of sex work industry**

- 8 No sex workers to be under 18
- 9 No clients to be under 18
- 10 Proximity to children's facilities
- 11 Practices for prevention and treatment of sexually transmissible infections
- 12 Development—special rules for small (worker-based) sex businesses
- 13 ERD Court order prohibiting use of premises on systematic or regular basis for sex work
- 14 Council by-laws relating to advertising of sex business

### **Part 4—Miscellaneous**

- 15 Liability for act or default of officer, employee or agent
- 16 Continuing offences
- 17 General defence
- 18 Regulations

### **Schedule 1—Related amendments**

#### **Part 1—Preliminary**

- 1 Amendment provisions

---

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

- 2 Amendment of section 5—Interpretation
- 3 Amendment of section 270—Punishment for certain offences
- 4 Variation of Schedule 11—Abolition of certain offences

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

- 5 Amendment of section 5—Interpretation
- 6 Amendment of section 85T—Criteria for establishing discrimination on other grounds
- 7 Amendment of section 85U—Application of Division
- 8 Amendment of section 85ZA—Application of Division
- 9 Amendment of section 85ZB—Discrimination by associations
- 10 Amendment of section 85ZD—Application of Division
- 11 Amendment of section 85ZF—Discrimination by person disposing of interest in land
- 12 Amendment of section 85ZG—Discrimination in provision of goods and services
- 13 Amendment of section 85ZH—Discrimination in relation to accommodation
- 14 Amendment of section 85ZI—Charities
- 15 Amendment of section 85ZK—Measures intended to achieve equality

## Part 4—Amendment of *Fair Work Act 1994*

- 16 Amendment of section 4—Interpretation

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

- 17 Amendment of section 4—Interpretation
- 18 Amendment of section 21—Permitting premises to be frequented by thieves etc
- 19 Repeal of sections 25, 25A and 26
- 20 Repeal of Part 6

## Part 6—Amendment of *Workers Rehabilitation and Compensation Act 1986*

- 21 Amendment of section 3—Interpretation
- 

## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Sex Work Industry Act 2011*.

#### 2—Commencement

- 5 This Act comes into operation on the day on which it is assented to by the Governor.

#### 3—Interpretation

In this Act, unless the contrary intention appears—

*children's facility* means—

- (a) a school; or
- 10 (b) a kindergarten within the meaning of the *Children's Services Act 1985*; or

- (c) a child care centre within the meaning of the *Children's Services Act 1985*; or
- (d) a playground, children's art, dance or drama studio or other similar facility used principally for children's activities; or
- (e) a facility of a kind declared by regulation to be a children's facility;

5 **client** means a person with whom a sex worker engages in commercial sex;

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

**council** has the same meaning as in the *Local Government Act 1999*;

**health information** means information on practices and services for the prevention and treatment of sexually transmissible infections;

**involved in the operation of a sex business**—see section 4;

15 **outback** has the same meaning as in the *Outback Communities (Administration and Management) Act 2009*;

**payment** includes any form of commercial consideration;

**premises** includes a building, vehicle, vessel, aircraft or other place;

**premises used on a systematic or regular basis for sex work**—see section 5;

20 **sex business** means a business constituted of, or involving, the provision of commercial sex or arranging for the provision of commercial sex;

**sex work** means the work of personally providing commercial sex;

**sex worker** means a person who undertakes sex work;

25 **small (worker-based) sex business** means a sex business in which no more than 3 sex workers are employed or otherwise engaged and no person other than the sex workers so employed or engaged is involved in the operation of the business.

#### 4—References to person involved in operation of sex business

For the purposes of this Act, a person is involved in the operation of a sex business if the person—

- 30 (a) carries on the business; or
- (b) is a director of a body corporate that carries on the business; or
- (c) is the manager of the business; or
- (d) has a right to participate in, or a reasonable expectation of participating in, income or profits derived from the conduct of the business; or
- 35 (e) is in a position to influence or control the conduct of the business.

## 5—References to premises used on systematic or regular basis for sex work

For the purposes of this Act, premises will not be regarded as being used on a systematic or regular basis for sex work if—

- (a) accommodation is normally provided at the premises on a commercial basis; and
- (b) no sex business in the course of which commercial sex is provided at the premises has a place of business at the premises; and
- (c) no arrangement for the provision of commercial sex at the premises is entered into, and no offer to enter such an arrangement is made, in the course of a sex business by a person present at the premises.

## Part 2—Decriminalisation of prostitution

### 6—Offences relating to prostitution abolished and convictions taken to be spent

- (1) Offences relating to prostitution are abolished.
- (2) For the purposes of the *Spent Convictions Act 2009*, the conviction of a person for an offence relating to prostitution will be taken to be immediately spent.
- (3) Subsection (2) applies subject to the operation of section 6 of the *Spent Convictions Act 2009*.
- (4) For the purposes of this section, an *offence relating to prostitution* 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 its abolition by this Act).

### 7—Contracts for commercial sex

- (1) A contract for the provision of, or arranging the provision of, commercial sex is not illegal or void on public policy or similar grounds.
- (2) However, a contract for the provision of, or arranging the provision of, commercial sex personally by, or to, a person under 18 years of age is null and void.
- (3) Despite anything in a contract for the provision of commercial sex, a person may, at any time, refuse to provide, or continue to provide, commercial sex to another person.
- (4) The fact that a person has entered into a contract to provide or be provided commercial sex does not of itself constitute consent for the purposes of the criminal law if the person does not consent, or withdraws consent, to providing or being provided commercial sex.

- (5) However, nothing in this section affects a right (if any) to rescind or cancel, or to recover damages for, a contract for the provision of commercial sex that is not performed.

### Part 3—Regulation of sex work industry

#### 8—No sex workers to be under 18

- (1) A person must not engage in commercial sex personally provided by a person who is under 18 years of age.

Maximum penalty: 7 years imprisonment.

- (2) A person must not cause, assist, facilitate or encourage a person under 18 years of age to be a sex worker.

Maximum penalty: 7 years imprisonment.

- (3) A person must not receive a payment if the person knows, or ought reasonably to know, that the payment is derived, directly or indirectly, from commercial sex personally provided by a person under 18 years of age.

Maximum penalty: 7 years imprisonment.

- (4) However, nothing in this section prevents a person providing legal, counselling, health or medical advice or services to a person under 18 years of age or receiving payment for such advice or services.

#### 9—No clients to be under 18

A person must not provide commercial sex to a person under 18 years of age.

Maximum penalty: 7 years imprisonment.

#### 10—Proximity to children's facilities

- (1) A person is guilty of an offence if—

(a) the person establishes premises for use on a systematic or regular basis for sex work and the premises are located within 200 metres of a children's facility; or

(b) the person continues, on or after the day falling 3 months after the commencement of this Act, to use premises on a systematic or regular basis for sex work that were, immediately before that commencement, used for that purpose and located within 200 metres of a children's facility; or

(c) the person uses premises on a systematic or regular basis for sex work and the person knows or ought reasonably to have known that the premises were established or continued in use in contravention of paragraph (a) or (b); or

(d) the person is the owner of premises established or used in contravention of a preceding paragraph.

Maximum penalty: \$20 000.

- (2) Subsection (1) does not apply in relation to premises used in the course of a small (worker-based) sex business.

- (3) A person must not in a public place, or within view or hearing of a person in a public place, that is within 200 metres of a children's facility—
- (a) offer to provide commercial sex; or
  - (b) ask another to provide commercial sex.

5 Maximum penalty: \$20 000.

### 11—Practices for prevention and treatment of sexually transmissible infections

A person who is involved in the operation of a sex business must, in relation to that business—

- 10 (a) take all reasonable steps to ensure that no commercial sex is provided by a sex worker unless a prophylactic sheath or other appropriate barrier is used if those services involve vaginal, anal or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections; and
- 15 (b) take all reasonable steps to give health information (whether oral or written) to sex workers and clients (including by ensuring that health information is displayed prominently at any premises used on a systematic or regular basis for sex work); and
- 20 (c) not state or imply that a medical examination of a sex worker means the sex worker is not infected, or likely to be infected, with a sexually transmissible infection; and
- (d) take all other reasonable steps to minimise the risk of sex workers or clients acquiring or transmitting sexually transmissible infections.

Maximum penalty: \$20 000.

### 12—Development—special rules for small (worker-based) sex businesses

- 25 (1) The *Development Act 1993* applies to a proposed development involving premises to be used on a systematic or regular basis for sex work in the course of a small (worker-based) sex business as if the regulations under that Act—
  - (a) described the proposed development as a complying development; and
  - 30 (b) assigned the form of development to Category 1 and did not provide that an assignment by a Development Plan may prevail.
- (2) A Development Plan may not prescribe conditions or exceptions to the description of the proposed development as a complying development and the proposed development cannot be made subject to section 37 of the *Development Act 1993*.

### 13—ERD Court order prohibiting use of premises on systematic or regular basis for sex work

35 The Environment, Resources and Development Court may, on application by a council or the Outback Communities Authority, make an order that particular premises situated within the area of the council or the outback that are or have been used on a systematic or regular basis for sex work must not be used for that purpose if  
40 satisfied that the order should be made to protect children, protect public amenity or minimise nuisance or serious offence to ordinary members of the public.

**14—Council by-laws relating to advertising of sex business**

- (1) A council may make by-laws prohibiting or regulating advertising of a sex business in the area of the council.
- (2) The objective of authorising by-laws under this section is to protect children, protect public amenity and minimise nuisance or serious offence to ordinary members of the public.

**Part 4—Miscellaneous**

**15—Liability for act or default of officer, employee or agent**

For the purposes of this Act, an act or default of an officer, employee or agent of a person will be taken to be an act or default of that person unless it is proved that the officer, employee or agent acted outside the scope of his or her actual, usual and ostensible authority.

**16—Continuing offences**

If an offence against this Act is committed by a person by reason of a continuing act or omission—

- (a) the person is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continues of not more than an amount equal to one-fifth of the maximum penalty fixed for that offence; and
- (b) if the act or omission continues after the person is convicted of the offence, the person is guilty of a further offence against that provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continues after that conviction of not more than an amount equal to one-fifth of the maximum penalty fixed for that offence.

**17—General defence**

It is a defence to a charge of an offence against this Act if the defendant proves that the offence did not result from any failure on the defendant's part to take all reasonable and practicable measures to avoid the commission of the offence or offences of the same or a similar nature.

**18—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or as are necessary or expedient for the purposes of, this Act.
- (2) Without limiting subsection (1), the regulations may—
  - (a) prescribe a code of conduct for sex workers, clients or persons involved in the operation of a sex business; and
  - (b) impose fines, not exceeding \$5 000, for offences against the regulations.
- (3) Regulations under this Act may—
  - (a) be of general application or limited application; and

- (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
- (c) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister.
- 5 (4) Regulations under this Act may refer to or incorporate, wholly or partially and with or without modification, a specified code or standard as in force at a specified time or as in force from time to time.
- (5) If a code or standard is referred to or incorporated in the regulations—
- 10 (a) a copy of the code or standard must be kept available for inspection by members of the public, without charge and during normal office hours, at a prescribed office; and
- (b) evidence of the contents of the code or standard may be given in legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code or standard.

## 15 **Schedule 1—Related amendments**

### **Part 1—Preliminary**

#### **1—Amendment provisions**

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

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

#### **2—Amendment of section 5—Interpretation**

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

#### **3—Amendment of section 270—Punishment for certain offences**

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

#### 25 **4—Variation of Schedule 11—Abolition of certain offences**

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

and

- (30) common law offences relating to prostitution.

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

#### 30 **5—Amendment of section 5—Interpretation**

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

*sex worker* has the same meaning as in the *Sex Work Industry Act 2011*;

**6—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 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 having been a sex worker—

(a) if he or she treats another unfavourably because the other has in the past been a prostitute or sex worker; or

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

**7—Amendment of section 85U—Application of Division**

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

, religious appearance or dress or having been a sex worker

**8—Amendment of section 85ZA—Application of Division**

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

, caring responsibilities or having been a sex worker

**9—Amendment of section 85ZB—Discrimination by associations**

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

or

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

**10—Amendment of section 85ZD—Application of Division**

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

, religious appearance or dress or having been a sex worker

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

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

, caring responsibilities or having been a sex worker

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

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

, caring responsibilities or having been a sex worker

**13—Amendment of section 85ZH—Discrimination in relation to accommodation**

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

, caring responsibilities or having been a sex worker

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

(6) This section does not apply to discrimination on the ground of 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 have in the past been prostitutes or sex workers.

**14—Amendment of section 85ZI—Charities**

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

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

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

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

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

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

persons without caring responsibilities, or persons who have not in the past been prostitutes or sex workers

**Part 4—Amendment of *Fair Work Act 1994*****16—Amendment of section 4—Interpretation**

Section 4(1), definition of *contract of employment*—after paragraph (d) of the definition insert:

(e) a contract under which a person (the *employer*) engages another (the *employee*) to undertake sex work within the meaning of the *Sex Work Industry Act 2011* in the course of a sex business within the meaning of that Act (even though the contract would not be recognised at common law as a contract of employment);

**Part 5—Amendment of *Summary Offences Act 1953*****17—Amendment of section 4—Interpretation**

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

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

Section 21—delete ", prostitutes" wherever occurring

**19—Repeal of sections 25, 25A and 26**

5 Sections 25, 25A and 26—delete the sections

**20—Repeal of Part 6**

Part 6—delete the Part

**Part 6—Amendment of *Workers Rehabilitation and Compensation Act 1986***

10 **21—Amendment of section 3—Interpretation**

Section 3(1)—after the definition of *prescribed allowance* insert:

*prescribed work* means—

- 15
- (a) sex work within the meaning of the *Sex Work Industry Act 2011* undertaken in the course of a sex business within the meaning of that Act; or
  - (b) work of a kind prescribed by regulation;