

# Committee to Decriminalise Prostitution

A consultative body representing prostitute advocacy groups in South Australia

## Prostitution Act of 1996

(Draft 5)

*(PENET Editor's Note: This was proposed legislation, not yet adopted in South Australia. This is submitted as model legislation which decriminalizes and regulates the industry. In Australia there is a precedent for this legislation. For example, The Prostitution ACT of 1992 (currently in effect) from the Australian Capital Territories contains some of these provisions, but is not a complete model for decriminalization. Please note that a number of the regulations below contradict some sex workers' rights agendas. These are explained in the [editor's notes](#) linked to this text.*

### PHILOSOPHICAL OVERVIEW

*The following values and observations have informed the drafting of this Bill to decriminalise and regulate prostitution drawn up by the Committee to Decriminalise Prostitution.*

- No person's human or civil rights should be violated on the basis of their trade, occupation, work, calling or profession.
- No law has ever succeeded in stopping prostitution.
- Prostitution is the provision of sexual services for negotiated payment between consenting adults. So defined, prostitution is a service industry like any other in which people exchange skills for money or other reward. People who choose to engage in prostitution have the right to do so under the full protection of the law.
- Non-consenting adults and all children forced into sexual activity (commercial or otherwise) deserve the full protection of the law and perpetrators deserve full punishment by the law.
- Workers in the sex industry deserve the same rights as workers in any other trade, including the right to legal protection from crimes such as sexual harassment, sexual abuse and rape.
- Workers in the sex industry have the right to declare sex work as a legitimate vocation and source of income to financial institutions including lending organisations, credit facilities and the Australian Taxation Office.
- Individuals and groups who believe prostitution is 'wrong' have the right not to engage in prostitution, as workers or as clients.
- There are some unscrupulous people in all walks of life -government, law, journalism, banking, law enforcement, the stock exchange, medicine, the clergy, prostitution, etc. If every profession were criminalised when some of its members broke the law, there would be few legally sanctioned professions. Unscrupulous people should be summarily dealt with by the law, regardless of which profession they corrupt.

- Existing laws already address criminal activity sometimes associated with but not inherent in prostitution. To avoid redundant legislation, we strongly recommend existing Civil and Criminal Laws be vigilantly enforced re:

Blackmail  
 Child abuse  
[Child labour](#)  
 Child sexual abuse  
 Coercion  
 Drugs- illegal use and sale of  
 Extortion  
 Fraud  
 Immigrants, illegal employment and/or exploitation of  
 Kidnapping  
[Pornography](#)  
 ublic Nuisances  
 Rape  
 Racism  
 Sexual Abuse Sexual Harassment  
 Slavery  
 Theft  
 Violence

- **Prostitution is business. As such it should be subject to the same laws that regulate every other business in South Australia in areas which include but are not limited to:**

Advertising  
 Home Operated Small Business  
 Industrial Relations  
 Occupational Health and Safety  
 Planning and Zoning  
 Restrictions on other businesses at brothels  
 Soliciting  
 Special Enforcement Provisions for the Police  
 STDs (Health tests for sex workers can be mandatory only if they are mandatory for all adults engaging in consensual sexual activities)  
 Trade Practices

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**PROSTITUTION ACT 1996-SUMMARY OF PROVISIONS-(Draft 4a)**

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**PROSTITUTION ACT 1996** (Draft 5)

**A BILL FOR**

An Act to decriminalise and regulate prostitution; and to make related amendments to the Criminal Law Consolidation Act 1935 and the Summary Offences Act 1953; and for other purposes.

The Parliament of South Australia enacts as follows:

## **PART 1 PRELIMINARY**

### **SHORT TITLE**

This Act may be known as the Prostitution Act 1996.

### **COMMENCEMENT**

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

### **APPLICATION**

This Act operates to the exclusion of all other laws under which offences relating to prostitution are established. See Part 6.

### **INTERPRETATION**

In this Act, unless the contrary intention appears -

"**brothel**" means premises used or to be used for the purpose of **prostitution**; **brothel** does NOT include a natural person's usual place of residence and does NOT include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs pursuant to an arrangement initiated elsewhere;

"**child**" means a person who has not attained the age of 18 years;

"**commercial sexual services**" means **sexual services** provided for negotiated payment between **consenting adults**;

"**consenting adult**" means a person who has attained the age of 18 years and makes personal decisions of her or his own free will without **duress**;

"**drugs of dependence**" include legal substances as well as prohibited substances within the meaning of the *Controlled Substance Act 1986*;

"**duress**" means **undue influence** or coercion by force or threat;

"**escort agency**" means a business of arranging **prostitution** at premises other than a **brothel** ;

"**operator**" of a **brothel or escort agency** means a person carrying on day-to-day control of a business consisting of or involving **prostitution** or the arranging of **prostitution**;

"**owner**" of a **brothel or escort agency**, whether a natural person or a body corporate, is the employer of the **prostitute/s** and other support staff including the **operator**;

"**prophylactic**" means a condom or other device that is adequate to prevent the transmission of a **sexually transmitted disease**;

"**prostitute**" means a person who provides **commercial sexual services**;

"**prostitution**" means the provision of sexual services for negotiated payment between consenting adults.

"**Prostitution Consultation Board**" means the Prostitution Consultation Board appointed under Part 2, section 6.

"**Register**" means the Register of Brothel and Escort Agency Owners and Operators appointed under Part 4, section 10.

"**Registrar**" means the Registrar appointed under Part 4, section 9.

"**sexual services**" means any consensual act between two or more persons which provides, or is intended to provide, sexual excitation for one or more of those persons;

"**sexually transmitted disease**" means a disease so declared by regulation;

"**sex worker**" means a person who provides commercial sexual services;

"**undue influence**" includes but is not limited to -

- (a) violence;
- (b) intimidation;
- (c) deception;
- (d) the supply of, the offer to supply, or the withholding of a drug of dependence;

"**worker**" means a **sex worker** or any other support staff employed by an **owner**.

## **OBJECTS OF THE ACT**

### **5. The objects of this Act are**

- (1) to promote the occupational health, safety and welfare of sex workers;
- (2) to protect children from exploitation in relation to prostitution;
- (3) to promote public health;
- (4) to protect the privacy and independence of sex workers;
- (5) to support sex worker self-determination within a regulated industry;

(6) to encourage responsible practices by South Australian workers and operators and owners;

(7) to discourage criminal involvement in South Australia's sex industry.

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## **PART 2**

### **PROSTITUTION CONSULTATION BOARD**

#### **CONSTITUTION OF THE BOARD**

6. (1) There shall be a Board to be called the "Prostitution Consultation Board"

(2) The Attorney General shall appoint six members to the Board, at least half of whom shall be current or former sex workers and (reflecting the fact that the majority of sex workers are women) the majority of whom shall be women -

(a) one shall be a legal practitioner nominated by the Attorney General and this member shall be the Chair;

(b) one shall be nominated by the Office of the Status of Women;

(c/d) two shall be selected from nominees submitted by South Australian sex worker rights organisations;

(e) one shall be selected from nominees submitted by owners of brothels and escort agencies;

(f) one shall be nominated by the United Trades and Labour Council.

#### **FUNCTION AND POWERS OF THE BOARD**

7. (1) The Board shall exercise its functions under this Act with a view to fulfilling the objects of the Act as stated in Part I, section 5 to ensure that services offered by brothels and escort agencies are of high professional standards.

##### **(2) The functions of the Board are**

(a) to make recommendations to the Attorney General in relation to regulations as are necessary or expedient for the purposes of, or as are contemplated by, this Act;

(b) to develop a code of ethics for the sex industry;

(c) to collaborate with appropriate state and local government bodies and other appropriate authorities about planning and development regulations.

(d) to liaise with appropriate government bodies to ensure that sex industry workers, owners and businesses are afforded standard business benefits including insurance, worker's coverage, business loans, etc.

### **(3) Reporting**

(a) The Board shall, on or before the thirtieth day of September in each year, deliver a report to the Attorney General about its consultations and deliberations during the period of twelve months that ended on the preceding thirtieth day of June.

(b) The Attorney General shall cause a copy of the report to be made available to each House of Parliament within three sitting days after it has been delivered to him.

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## **PART 3 REGULATIONS**

### **SCOPE OF REGULATIONS**

8.

(1) Without limiting the generality of Part 2, section 7 (2), the regulations may -

(a) require the owner and operator of a brothel or escort agency, or a prostitute, to comply with a code of practice which shall include provisions about -

(i) cleanliness;

(ii) hygiene standards for swimming pools, spa baths and sexual aids; ;

(iii) the provision, use and laundering of towels and other items of linen;

(iv) the provision of and hygiene standards for showers, washing and toilet facilities;

(v) the provision and disposal of prophylactics;

(vi) the provision, to prostitutes and to clients, of information relating to sexually transmitted diseases ;

(vii) any other matter relating to the health and safety of prostitutes and of clients;

(b) make provision in relation to -

(i) the inspection of brothels and escort agencies for the purpose of ensuring compliance with this Act;

(ii) the provision of information to the Registrar from time to time by the owner of a brothel or escort agency in accordance with conditions of confidentiality in Part 4, section

10 ( 3) & (4);  
(iii) the advertising of commercial sexual services.

(2) Regarding regulations and codes of practice -

(a) a copy of each regulation and code must be kept available for inspection by members of the public, without charge and during normal business hours, at the office of the Registrar; and

(b) evidence of the contents of each regulation and code may be given in any legal proceedings by production of a document certified by the Attorney General to be a true copy of the code or standard.

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## **PART 4**

### **REGISTRATION**

#### **REGISTRAR**

9. (1) There will be a **Registrar** for the purposes of this Act.

(2) The Registrar will be appointed under the *Government Management and Employment Act 1985*.

(3) The position of Registrar may be held in conjunction with any other position in the Public Service.

#### **REGISTER**

10.

(1) The Registrar shall establish and maintain a **Register of Brothel and Escort Agency Owners and Operators**.

(2) The Register must be available for inspection during normal business hours on payment of the fee fixed in the regulations.

(3) Information relating to the residential address of an owner or operator, and other information of a class specified by regulation, must be set aside in a part of the Register deemed confidential.

(4) That part of the Register set aside for confidential information may be inspected only by a person, or a person of a class, specified by Regulation and acting in the ordinary course of her or his duties.

(5) Information relating to the personal details of a worker who is not also an owner or operator (including name and address, professional or residential) cannot be required by this legislation.

## **REGISTRATION & APPLICATION TO REGISTER**

11. (1)

(a) The owner of a currently-operating brothel or currently-operating escort agency must make written application to the Registrar within 21 days after the date of commencement of this Act if the owner desires to stay in business past that date.

(b) Prospective brothel or escort agency owners must make written application to the Registrar before opening for business.

### **Maximum Penalty:**

(a) In the case of a natural person --\$10,000 or imprisonment for 2 years;

(b) In the case of a body corporate --\$50,000.

(2) The application must -

(a) contain the following particulars with respect to the business:

(i) the business name (if any) and the business address;

(ii) if the owner is a natural person, that person's name and residential address; and

(iii) if the owner is a body corporate.

(A) the corporation's name and business address; and

(B) the name and residential address of each director and each shareholder; and

(iv) if the operator is a natural person, that person's name and residential address; and

(v) if the operator is a body corporate.

(A) the corporation's name and business address; and

(B) the name and residential address of each director and each shareholder; and

(vi) any other particulars required to be disclosed by regulation; and

(c) be accompanied by the fee fixed by the regulation.

(3)

The owner must give written notice to the Registrar of any change in particulars within 14 days after the date of that change.

### **Maximum Penalty:**

- (a) In the case of a natural person --\$10.000 or
- (b) imprisonment for 2 years; In the case of a body corporate --\$50.000.

(4) A person making a false or misleading statement in a material particular to information provided under the section (whether by reason of the inclusion or omission of a particular) is guilty of an offense.

Maximum Penalty:

- (a) If a natural person made the statement knowing that it was false or misleading -- \$10.000 or imprisonment for 2 years;
  - (b) If the statement was made by a body corporate or on behalf of a body corporate -- \$50.000;
  - (c) In any other case --\$2.000.
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## **PART 5**

### **OFFENCES**

#### **EXPLOITATION OF CHILDREN IN RESPECT TO PROSTITUTION**

12. (1) A person who causes, induces or permits a child to provide or receive sexual services for payment or reward is guilty of an offense

Maximum Penalty:

- (a) If the child is under 12 years of age--imprisonment for life.
- (b) If the child has attained 12 years of age but the person used coercion or undue influence to cause or induce the child to provide or receive sexual services for payment or reward -- imprisonment for 10 years.
- (c) In any other case, imprisonment for 8 years.

(2) A person who -

- (a) obtains money in respect of sexual services provided by a child; or
- (b) obtains money from a child (except in the ordinary course of business unrelated to prostitution) knowing it to have been derived from commercial sexual services provided by a child, is guilty of an offence.

**Maximum Penalty:**

- (a) If the child is under 12 years of age--imprisonment for life.
- (b) In any other case --imprisonment for 8 years.

(3) A person must not, for the purpose of offering or procuring sexual services for payment or reward, accost a child in a public place.

**Maximum Penalty:**

Imprisonment for 3 years.

(4) In proceedings for an offence against this section -

(a) an allegation by the prosecution that a person was under 18 years of age at the time of the alleged offence constitutes proof, in the absence of proof to the contrary, of that fact; and

(b) it is not necessary for the prosecution to establish that the defendant knew the victim of the alleged offence to be a child.

(5) However, it is a defense to a charge of an offence against this section (except an offence involving coercion or undue influence) if it is proved -

(a) that the child had at the time of the alleged offence attained 16 years of age; and

(b) that the defendant took reasonable steps to ascertain the age of the child concerned and believed on reasonable grounds that the child had attained 18 years of age.

**DURESS**

13. (1) A person must not, by coercion or undue influence, cause or induce another to provide commercial sexual services.

Maximum Penalty: Imprisonment for 6 years.

(2) A person must not, by coercion or undue influence, cause or induce another to provide that person with payment derived (directly or indirectly) from the provision of commercial sexual services.

Maximum Penalty: Imprisonment for 6 years.

**OCCUPATIONAL HEALTH AND SAFETY**

14. (1) A person who provides or receives commercial sexual services must take reasonable precautions to ensure against infection by sexually transmitted diseases and against transmission of sexually transmitted diseases by -

using or insisting on the use of a prophylactic in any case of penetration of the labia majora or oral or anal penetration.

**Maximum Penalty:** \$5,000.

(2) A person must not, while providing or receiving commercial sexual services that involve penetration of the labia majora or oral or anal penetration

(a) misuse, damage or interfere with the efficiency of any prophylactic used; or

(b) continue to use a prophylactic that he or she knows, or could be reasonably expected to know, is damaged.

**Maximum Penalty:** \$5,000.

(3) the owner and operator of a brothel or escort agency must not discourage the use of prophylactics in the course of the business.

**Maximum Penalty:**

(a) In the case of a natural person --\$7,500.

(b) In the case of a body corporate --\$37,500.

(4) non-compliance with any code or regulation is an offence -

**Maximum Penalty:** \$5,000.

## **OFFENCES BY BODIES CORPORATE**

15. If a body corporate is guilty of an offence against this Act, each member of the governing body and the manager of the body corporate and all shareholders are guilty of an offence and are jointly and severally liable to the same penalty as may be imposed for the principal offence.

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## **PART 6**

### **CONSEQUENTIAL AMENDMENTS**

All criminal offences relating to acts of prostitution --other than those included in this Bill -- become null and void with the passage of this bill.

16. COMMON LAW offences relating to prostitution are abolished.

17. An ACT OF THE IMPERIAL PARLIAMENT has no further force or effect in this State to the extent that it enacts an offence relating to prostitution

18. The CRIMINAL LAW CONSOLIDATION ACT 1935 is amended

(1) by striking out section 63;

(2) by striking out from section 64,  
", Not being a common prostitute or a person of known immoral character.;

(3) by striking out section 270(1)(b).

19. The SUMMARY OFFENCES ACT 1953 is amended -

(1) by striking out from section 4 (1) the definition of "prostitute";

(2) by striking out from section 13 ", prostitutes";

(3) by striking out from section 21 ", prostitutes" wherever occurring;

(4) by striking out sections 25 to 32 (inclusive);

(5) by striking out all sections to do with "soliciting for the purposes of "prostitution".

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***PENET Editor's Notes:***

**Child Labour**-In the sex workers' rights movement there has been much discussion that some traditional child labor laws and interpretations leave young people with few options. PENET recommends that issues pertaining to youth should be reviewed by youth committees and youth advisory boards with members who have had diverse experience in this field. The simplistic approach to regulation of issues relating you youth in this document came after some debate, and was the result of a compromise writers felt was necessary to achieve public support. Visit PENET for [a discussion of policy recommendations from a youth organization](#) by Nelly Velasco from Street Survival Project.

**Pornography**, defined as sexually explicit material, is considered free speech and is protected as such in the US. Censorship of explicit material, per se, would adversely effect sex workers. The recommendation in this legislation refers specifically to laws in South Australia, although the enforcement of laws against pornography is not a recommendation of sex workers' rights organizations.

**Commercial Sexual Services**-In this draft "commercial sexual services" was replaced by "sexual services for payment or reward" in several places in this document, specifically in the sections relating to youth. It is unclear in the revision of this draft whether all references should use the latter phrase, "sexual services for payment or reward. "

**For further information:**

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