

South Australia

# **Prostitution Reform Bill 2013**

A BILL FOR

An Act to reform the law relating to the provision of commercial sexual services; to make related amendments to the *Criminal Law Consolidation Act 1935*, the *Spent Convictions Act 2009*, the *Summary Offences Act 1953* and the *Workers Rehabilitation and Compensation Act 1986*; and for other purposes.

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## The Parliament of South Australia enacts as follows:

### Part 1—Preliminary

#### 1—Short title

This Act may be cited as the *Prostitution Reform Act 2013*.

#### 2—Commencement

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

#### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—

*authorised officer*—see section 26;

- 10 *brothel* means any premises kept or habitually used for the purposes of providing commercial sexual services, but does not include premises at which accommodation is normally provided on a commercial basis if the commercial sexual services are provided under an arrangement initiated elsewhere;

*client* means a person who receives, or seeks to receive, commercial sexual services;

*commercial sexual services* means sexual services that—

- 15 (a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and

- (b) are provided for payment or other reward (whether or not the reward is given to the person providing the services or another person),

but does not include an act of a class excluded by regulation from the ambit of this definition;

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

*disqualifying offence*—see section 5;

*operator* of a sex work business—see section 4;

*operator certificate* means a certificate issued under section 14;

*premises* includes a part of premises;

10 *Sex Work Law Advisory Committee* or *Committee* means the committee established by section 29;

*Register* means the register required to be kept under section 9;

*Registrar* means the Registrar appointed under section 7;

15 *sex work business* means a business of providing, or arranging the provision of, commercial sexual services;

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

*small owner-operated brothel* means a brothel—

- (a) at which not more than 4 sex workers work; and

20 (b) where each of those sex workers retains control over his or her individual earnings from the provision of commercial sexual services at the brothel.

- (2) For the purposes of this Act, a reference to *providing* or *receiving* commercial sexual services means to provide or receive those services personally (and, to avoid doubt, does not include a reference to arranging another person to provide the services or arranging for the services to be received by another person).

#### 25 **4—Definition of operator**

- (1) For the purposes of this Act, an *operator* of a sex work business means a person who, whether alone or with others, owns, operates, controls, or manages the business and includes any person who—

- (a) determines—

30 (i) when or where an individual sex worker will work; or

(ii) the conditions in which sex workers in the business work; or

(iii) the amount of money, or proportion of an amount of money, that a sex worker receives as payment for the provision of commercial sexual services; or

35 (b) is a person who employs, supervises, or directs any person who does any of the things referred to in paragraph (a).

- (2) Despite subsection (1), for the purposes of this Act—

- (a) a sex worker who works at a small owner-operated brothel will be taken not to be an operator of that sex work business; and

- (b) a small owner-operated brothel does not have an operator.

## 5—Disqualification offences

For the purposes of this Act, the following offences are disqualification offences:

- (a) an offence against section 22;
- 5 (b) a serious and organised crime offence (within the meaning of the *Criminal Law Consolidation Act 1935*);
- (c) an offence against any of the following provisions of the *Criminal Law Consolidation Act 1935*:
- 10 (i) a provision of Division 1, 4, 7A, 7AB, 7C, 9, 11, 11A, 12, 13, or 16 of Part 3;
- (ii) a provision of Part 3B;
- (iii) a provision of Part 4;
- (iv) a provision of Part 5 or 5A;
- (v) a provision of Part 6B;
- 15 (vi) a provision of Part 7 (other than Division 7 or 8);
- (vii) a provision of Part 7A or 7B;
- (viii) a provision of Division 2, 3 or 4 of Part 9;
- (d) an offence against Part 5 Division 2 or 3 of the *Controlled Substances Act 1984* (other than a simple possession offence within the meaning of that Act);
- 20 (e) an offence against of the *Firearms Act 1977* punishable by a term of imprisonment;
- (f) an offence against the law of another State or a Territory that would, if committed in this State, be a disqualifying offence;
- 25 (g) a conspiracy to commit, or an attempt to commit, an offence referred to in any of the preceding paragraphs;
- (h) any other offence declared by the regulations to be included in the ambit of this definition.

## Part 2—Objects of Act

### 6—Objects

The objects of this Act are to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

- (a) safeguards the human rights of sex workers and protects them from exploitation; and
- 35 (b) promotes the welfare and occupational health and safety of sex workers; and
- (c) is conducive to public health; and

- (d) prohibits the use of persons under 18 years of age in relation to the provision of commercial sexual services; and
- (e) implements certain other related reforms.

## **Part 3—Administration**

### **7—Registrar**

- (1) There will be a registrar for the purposes of this Act.
- (2) The Registrar (who may be a member of the Public Service) will be appointed by the Minister on terms and conditions determined by the Minister.
- (3) In exercising a function or power under this Act, the Registrar—
  - (a) is not bound by the rules of evidence and may inform himself or herself on any matter as he or she thinks fit; and
  - (b) must act according to the principles of natural justice and ensure procedural fairness.

### **8—Power of delegation**

- (1) The Registrar may delegate a function or power under this Act to a specified person or body.
- (2) A delegation under this section—
  - (a) must be by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the ability of the Registrar to act in any matter; and
  - (d) is revocable at will.

### **9—Register**

- (1) The Registrar must establish and maintain a register for the purposes of this Act comprising the following parts:
  - (a) a register of operators of sex work businesses who have been issued with an operator certificate;
  - (b) a register of persons who have been granted a waiver of disqualification under section 13;
  - (c) such other parts as the Registrar thinks appropriate.
- (2) The Register must, in relation to each entry in the register, contain the information required by the regulations in relation to an entry of the relevant kind and may contain any other information or document that the Registrar thinks fit.
- (3) The Registrar must correct an entry in the Register that is not, or has ceased to be, correct.

### **10—Inspection of Register**

The Register may only be inspected in accordance with the regulations.

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## 11—Guidelines

- (1) The Registrar must, in conjunction with the Sex Work Law Advisory Committee, prepare and submit to the Minister for approval the following guidelines:
  - 5 (a) guidelines relating to the operation of, and obligations under, this and any other relevant Act in respect of carrying on a sex work business;
  - (b) guidelines to be followed by authorised officers when exercising functions and powers under this Act.
- (2) The Registrar may, at any time, with the approval of the Minister, amend the guidelines, or substitute new guidelines.
- 10 (3) Before approving the guidelines under this section, or an amendment to or substitution of the guidelines, the Minister must consult with the bodies prescribed by the regulations for the purposes of this subsection.
- (4) A person is entitled to inspect (without charge) the guidelines during ordinary office hours at the place or places determined by the Registrar.
- 15 (5) A person is entitled, on payment of the prescribed fee, to a copy of the guidelines.

## Part 4—Operator certificates

### 12—Operator of sex work business to hold operator certificate

- (1) An operator of a sex work business must, on or after the prescribed day, hold an operator certificate.  
20 Maximum penalty: \$10 000.
- (2) In this section—  
*prescribed day* means the day falling on the 6 month anniversary of the commencement of this section.

### 13—Certain persons disqualified from holding operator certificate

- 25 (1) The following persons are disqualified from holding an operator certificate:
  - (a) a person who at any time has been found guilty of a disqualifying offence;
  - (b) a person who is subject to a control order under the *Serious and Organised Crime (Control) Act 2008* or corresponding control order (within the meaning of that Act);
  - 30 (c) any other person declared by the regulations to be included in the ambit of this subsection.
- (2) A body corporate is disqualified from holding an operator certificate if any director of the body corporate, or an associate of any director, is a person who is disqualified from holding an operator certificate.
- 35 (3) However, a person or body corporate who is disqualified from holding an operator certificate may apply to the Registrar for an order waiving the disqualification.
- (4) An application—
  - (a) must be made in a manner and form determined by the Registrar; and

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## Part 4—Operator certificates

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- (b) must be accompanied by such information or documents as the Registrar may require; and
- (c) must be accompanied by the prescribed fee.
- 5 (5) On receipt of an application, the Registrar must send a copy of the application (but not any accompanying information or documents) to the Commissioner of Police.
- 10 (6) The Commissioner of Police must, within 21 days of receipt of the copy of the application, provide a written report to the Registrar containing the information required by the regulations, and any recommendation of the Commissioner of Police, in relation to the application (and the Registrar must immediately forward a copy of the report to the applicant).
- (7) If the Commissioner of Police does not provide a report to the Registrar in accordance with subsection (6), the Registrar may determine the application and, or that purpose, may determine that the Commissioner of Police has no objection to the application being granted.
- 15 (8) The Registrar may make an order waiving a disqualification if he or she is satisfied that—
- (a) the applicant's or director's offending (as the case requires) was of a nature, or occurred so long ago, that it ought no longer to be a barrier to obtaining an operator certificate; and
- 20 (b) the applicant is not, and has not recently, been associated or involved with persons who would themselves be disqualified from holding an operator certificate and who might reasonably be expected to exert an influence on the applicant.
- (9) An order waiving a disqualification remains in force until it is revoked under this section.
- 25 (10) An order waiving a disqualification is revoked by force of this subsection if the person to whom it applies—
- (a) is found guilty of a disqualification offence; or
- 30 (b) becomes subject to a control order under the *Serious and Organised Crime (Control) Act 2008* or corresponding control order (within the meaning of that Act); or
- (c) otherwise becomes a person who is disqualified from holding an operator certificate.
- 35 (11) The Registrar may, by notice in writing, revoke an order waiving a person's disqualification if he or she is satisfied that the waiver ought to be revoked on the grounds that the person is associated or involved with persons who would themselves be disqualified from holding an operator certificate and who might reasonably be expected to be exerting an influence over the person.
- 40 (12) The Registrar must keep the applicant and the Commissioner of Police properly informed as to the progress and outcome of any application or revocation under this section.

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**14—Issue of operator certificates**

- (1) A person may apply to the Registrar for a certificate under this section (an *operator certificate*).
- (2) An application—
- 5           (a) must be made in a manner and form determined by the Registrar; and
- (b) must be accompanied by—
- (i) if an order waiving the disqualification of the applicant has been made under section 13—a copy of the order; and
- 10           (ii) such information or documents as the Registrar may reasonably require; and
- (iii) the prescribed fee.
- (3) The Registrar must issue an operator certificate to an applicant if—
- (a) an application is made in accordance with this section; and
- (b) the applicant—
- 15           (i) is not disqualified from holding an operator certificate; or
- (ii) has been granted a waiver of disqualification under section 13 that is in force; and
- (c) if the applicant is a natural person—the applicant is aged 18 years or older.
- (4) An operator certificate must be in the prescribed form.
- 20 (5) An operator certificate remains in force until it is revoked under this Act.
- (6) If the Registrar refuses to issue an operator certificate, the Registrar must notify the applicant in writing giving reasons for the decision.

**15—Revocation of operator certificate**

- 25 (1) An operator certificate is, by force of this subsection, revoked if the holder of the operator certificate, or, in the case of a holder of an operator certificate that is a body corporate, any director of the body corporate—
- (a) is found guilty of a disqualification offence; or
- (b) becomes subject to a control order under the *Serious and Organised Crime (Control) Act 2008* or corresponding control order (within the meaning of that
- 30           Act); or
- (c) otherwise becomes a person who is disqualified from holding an operator certificate; or
- (d) has had his or her waiver of disqualification under section 13 revoked.
- 35 (2) A person whose operator certificate is revoked under this section must return the operator certificate, and any replacement certificates, to the Registrar within 28 days after the revocation.
- (3) A person who refuses or fails to comply with subsection (2) is guilty of an offence. Maximum penalty: \$2 000.

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**16—Replacement of operator certificate**

- (1) The holder of an operator certificate may apply to the Registrar for a replacement certificate to be issued.
- (a) the holder applies for a replacement certificate and the Registrar is satisfied that the original operator certificate has been lost or destroyed; and
- (b) the holder supplies 1 or more recent photographs of himself or herself that comply with the prescribed requirements and are authenticated in the prescribed manner; and
- (c) the holder pays the prescribed fee (if any).
- (2) An application—
- (a) must be made in a manner and form determined by the Registrar; and
- (b) must be accompanied by—
- (i) such information or documents as the Registrar may reasonably require; and
- (ii) the prescribed fee.
- (3) The Registrar may only issue a replacement certificate if he or she is satisfied that the original operator certificate has been lost or destroyed.

**17—Operator to produce operator certificate on request**

- (1) An authorised officer may require an operator of a sex work business to produce his or her operator certificate for inspection.
- (2) A person who, without reasonable excuse, refuses or fails to comply with a requirement under subsection (1) is guilty of an offence.
- Maximum penalty: \$2 000.

**Part 5—Provision of commercial sexual services****Division 1—Contracts for commercial sexual services****18—Contract for provision of commercial sexual services not void**

- (1) No contract for the provision of, or arranging the provision of, commercial sexual services is illegal or void on public policy or other 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 void and of no effect.

**19—Refusal to provide commercial sexual services**

- (1) Despite any other Act or law, or anything in a contract for the provision of commercial sexual services, a person may, at any time, refuse to provide, or to continue to provide, a commercial sexual service to any other person.
- (2) The fact that a person has entered into a contract to provide commercial sexual services does not of itself constitute consent for the purposes of the *Criminal Law Consolidation Act 1935* or any other Act or law if he or she does not consent, or withdraws his or her consent, to providing a commercial sexual service.

- (3) 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 sexual services that is not performed.

## Division 2—Obligations on operators, sex workers and clients

### 20—Operators of sex work businesses must adopt and promote safer sex practices

- (1) An operator of a sex work business must, in relation to commercial sexual services provided in the course of carrying on the business—
- (a) take all reasonable steps to ensure that no commercial sexual services are 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 diseases; and
  - (b) take reasonable steps to give health information (whether oral or written) to sex workers and clients; and
  - (c) if the person operates a brothel—display health information prominently in that brothel; and
  - (d) 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
  - (e) take reasonable steps to minimise the risk of sex workers or clients acquiring or transmitting sexually transmissible infections.

- (2) An operator of a sex work business who contravenes subsection (1) is guilty of an offence.

Maximum penalty: \$10 000.

- (3) In this section—

*health information* means information on safer sex practices and on services for the prevention and treatment of sexually transmissible diseases.

### 21—Sex workers and clients must adopt safer sex practices

- (1) A person must not provide or receive commercial sexual services unless he or she has taken all reasonable steps to ensure 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.

Maximum penalty: \$2 000.

- (2) A person must not, for the purpose of providing or receiving commercial sexual services, state or imply that a medical examination of that person means that he or she is not infected, or likely to be infected, with a sexually transmissible infection.

Maximum penalty: \$2 000.

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Part 5—Provision of commercial sexual services

Division 2—Obligations on operators, sex workers and clients

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- (3) A person who provides or receives commercial sexual services must take reasonable steps to minimise the risk of acquiring or transmitting sexually transmissible infections.

Maximum penalty: \$2 000.

**5 Division 3—Restrictions on where sex work businesses can be operated****22—Certain sex work businesses not to be operated in prescribed areas**

- (1) The Governor may, by regulation, prescribe areas, or areas of a class, in which a person must not operate a sex work business that consists of, or includes, the provision of commercial sexual services.

- 10 (2) A person who operates a sex work business in a prescribed area is guilty of an offence.  
Maximum penalty: \$2 500 or imprisonment for 3 months.

- (3) However, subsection (2) does not apply—

- 15 (a) in relation to the provision of commercial sexual services at premises within a prescribed area if the sexual services are only provided to the owner or occupier of the premises; or  
(b) in any other circumstances prescribed by the regulations.

**Division 4—Miscellaneous****23—Restrictions on certain forms of advertising**

- (1) Advertisements for commercial sexual services must not be—

- 20 (a) published in a newspaper or periodical (other than in the classified advertisements section of the newspaper or periodical); or  
(b) screened at a public cinema.

- (2) A person who contravenes subsection (1), or who authorises any of the things described in that subsection to be done, is guilty of an offence.

25 Maximum penalty:

- (a) in the case of a body corporate—\$50 000;  
(b) in any other case—\$10 000.

- (3) In this section—

30 *advertisement* means any words, or any pictorial or other representation, used to notify the availability of, or promote the sale of, commercial sexual services, either generally or specifically.

## Part 6—Interaction with other Acts

### Division 1—Interaction with the *Local Government Act 1999*

#### 24—Council may make by-laws in relation to advertising of commercial sexual services

- 5 (1) A council may make by-laws prohibiting or regulating advertising of a sex business in the area of the council.

**Note—**

See Chapter 12 Part 1 of the *Local Government Act 1999* for the by-law making powers of councils.

- 10 (2) However, a by-law contemplated by this section may only be made if the council reasonably believes that the by-law is required to prevent the public display of signage that—
- (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or
- 15 (b) is incompatible with the existing character or use of that area.

### Division 2—Interaction with the *Workers Rehabilitation and Compensation Act 1986*

#### 25—Refusal to work as sex worker not to affect entitlements etc

- 20 (1) Despite a provision of the *Workers Rehabilitation and Compensation Act 1986* or any other Act or law, a person cannot—
- (a) have any entitlement to compensation under that Act reduced or affected in any other way by his or her being capable of working as a sex worker if he or she refuses to do, or to continue to do, that kind of work; or
- (b) be required to work, or continue to work, as a sex worker.
- 25 (2) For the purposes of this section, a reference to a refusal will be taken to include a reference to a refusal to do this kind of work in general (rather than a refusal of a particular job or at a particular time).

## Part 7—Authorised officers

### 26—Appointment of authorised officers

- 30 (1) The Minister may appoint persons to be authorised officers for the purposes of this Act.

**Note—**

The Minister may appoint existing officers, such as authorised persons under the *Local Government Act 1999*, to be authorised officers.

- 35 (2) Each police officer is an authorised officer for the purposes of this Act.

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- (3) An appointment under subsection (1) may be made subject to conditions or limitations specified in the instrument of appointment.
- (4) An authorised officer appointed under subsection (1) must be issued with an identity card—
- 5           (a) containing the person’s name and a photograph of the person; and
- (b) stating that the person is an authorised officer for the purposes of this Act; and
- (c) stating any limitations on the authorised officer’s authority.
- (5) An authorised officer must, at the request of a person in relation to whom the
- 10           authorised officer intends to exercise any powers under this Act, produce for the inspection of the person his or her identity card.
- (6) If a person in possession of an identity card issued to the person under this section ceases to be an authorised officer, the person must forthwith return the identity card to the Minister.
- 15           Maximum penalty: \$250.
- (7) The Minister may only appoint an authorised person of a council as an authorised officer with the agreement of the council.

## 27—Powers of authorised officers

- (1) An authorised officer may, as may reasonably be required in connection with the
- 20           administration, operation or enforcement of this Act—
- (a) enter and inspect any premises that the authorised officer reasonably suspects are being, or have been, used for or in connection with a sex work business;
- (b) enter and inspect any vehicle or vessel that the authorised officer reasonably suspects is being, or has been, used for or in connection with a sex work
- 25           business and, for that purpose, require a vehicle to stop, or to be presented for inspection at a place and time specified by the authorised officer, and board any vessel;
- (c) give directions with respect to the stopping or movement of a vehicle or vessel;
- 30           (d) require a person apparently in charge of a vessel to facilitate any boarding;
- (e) take measurements;
- (f) require any person to produce specified documents or documents of a specified kind, including a written record that reproduces in an
- 35           understandable form information stored by computer, microfilm or other process;
- (g) examine, copy or take extracts from a document or information so produced or require a person to provide a copy of any such document or information;
- (h) take photographs, films, audio, video or other recordings;
- 40           (i) seize and retain anything that the authorised officer reasonably suspects has been used in, or may constitute evidence of, a contravention of this Act;

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- (j) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, a contravention of this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;
- 5 (k) require a person who the authorised officer reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration, operation or enforcement of this Act to answer questions in relation to those matters.
- 10 (2) However, an authorised officer must not do any of the following except on the authority of a warrant issued by a magistrate:
- (a) exercise a power under subsection (1)(a) in respect of residential premises;
- (b) use force to break into or open any part of, or anything in or on, any premises, vehicle or vessel.
- 15 (3) A magistrate must not issue a warrant under subsection (2) unless satisfied that there are reasonable grounds to believe—
- (a) that a contravention of this Act has been, is being, or is about to be, committed in or on a place or vehicle; or
- (b) that something may be found in or on a place or vehicle that has been used in, or constitutes evidence of, a contravention of this Act; or
- 20 (c) that the circumstances require immediate action.
- (4) An application for the issue of a warrant under this section—
- (a) may be made either personally or by telephone; and
- (b) must be made in accordance with any procedures prescribed by the regulations.
- 25 (5) Where—
- (a) a person whose native language is not English is suspected of having committed an offence against this Act; and
- (b) the person is not reasonably fluent in English,
- the following provisions apply:
- 30 (c) the person is entitled to be assisted by an interpreter during any questioning conducted by an authorised officer in the course of an investigation of the suspected offence;
- (d) where it appears that the person may be entitled to be assisted by an interpreter, an authorised officer must not proceed with any questioning, or further questioning, until the person has been informed of the right to an interpreter;
- 35 (e) if the person requests the assistance of an interpreter, an authorised officer must not proceed with any questioning, or further questioning, until an interpreter is present.
- 40 (6) An authorised officer in exercising powers under this section may be accompanied by such assistants as are reasonably required in the circumstances.

**28—Hindering etc persons engaged in administration of Act**

- (1) A person who—
- (a) without reasonable excuse hinders or obstructs an authorised officer or other person engaged in the administration of this Act; or
  - 5 (b) fails to answer a question put by an authorised officer to the best of his or her knowledge, information or belief; or
  - (c) produces a document or record that he or she knows, or ought to know, is false or misleading in a material particular; or
  - 10 (d) fails without reasonable excuse to comply with a requirement or direction of an authorised officer under this Act; or
  - (e) uses abusive, threatening or insulting language to an authorised officer, or a person assisting an authorised officer; or
  - (f) falsely represents, by words or conduct, that he or she is an authorised officer, is guilty of an offence.

15 Maximum penalty:

- (a) in the case of an offence against paragraph (a) or (e)—\$5 000;
  - (b) in any other case—\$10 000.
- (2) A person is not obliged to answer a question or to produce a document or record as required under this Part if to do so might tend to incriminate the person or make the person liable to a penalty.

**Part 8—Sex Work Law Advisory Committee****29—Sex Work Law Advisory Committee**

- (1) The *Sex Work Law Advisory Committee* is established.
- (2) The Committee consists of up to ?? members appointed by the Governor, of whom—
- 25 (a) ; and
- (3) The Governor may appoint a person to be a deputy of a member and a person so appointed may act as a member of the Committee in the absence of the member.
- (4) The requirements of qualification and nomination (if applicable) made by this section in relation to the appointment of a member extend to the appointment of a deputy of that member.

30 **Drafting note—**

need details

**30—Terms and conditions of membership**

- (1) A member of the Board will be appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment and, at the expiration of a term of appointment, is eligible for reappointment.
- (2) However, a member of the Board may not hold office for consecutive terms that exceed 9 years in total.

- (3) The Governor may remove a member of the Board from office—
- (a) for breach of, or non-compliance with, a condition of appointment; or
  - (b) for misconduct; or
  - (c) for failure or incapacity to carry out official duties satisfactorily.

- 5 (4) The office of a member of the Board becomes vacant if the member—
- (a) dies; or
  - (b) completes a term of office and is not reappointed; or
  - (c) resigns by written notice to the Minister; or
  - (d) ceases to satisfy the qualification by virtue of which the member was eligible  
10 for appointment to the Committee; or
  - (e) is removed from office under subsection (3).

### 31—Presiding member and deputy

The Minister must, after consultation with the Committee, appoint a member of the Committee to preside at meetings of the Committee and another member to preside at  
15 meetings of the Committee in the absence of the presiding member.

### 32—Vacancies or defects in appointment of members

An act or proceeding of the Committee is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

### 33—Remuneration

20 A member of the Committee is entitled to remuneration, allowances and expenses determined by the Governor.

### 34—Procedures

Subject to this Act, the Committee may determine its own procedures.

### 35—Functions of Committee

25 The functions of the Committee are—

- (a) to assist in the preparation of guidelines relating to the provision of commercial sexual services; and
- (b) to provide such advice to the Minister as the Committee considers appropriate; and
- 30 (c) to carry out other functions assigned to the Committee by or under this Act, or by the Minister.

### 36—Review of operation of Act etc

- (1) The Sex Work Law Advisory Committee must—
- (a) as soon as practicable after the commencement of this Act—  
35 (i) assess the number of persons providing commercial sexual services in this State; and

- 
- (ii) prepare a report on its findings and submit the report to the Minister;  
and
- (b) after the third anniversary, but before the fifth anniversary, after the  
commencement of this Act—
- 5 (i) review the operation of this Act; and
- (ii) assess the impact of this Act on the number of persons working as  
sex workers in this State; and
- (iii) assess the nature and adequacy of the means available to assist  
persons to avoid or cease working as sex workers; and
- 10 (iv) consider whether any amendments to this Act or any other Act or law  
are necessary or desirable in relation to the provision of commercial  
sexual services; and
- (v) prepare a report on its findings and submit the report to the Minister.
- (2) The Minister must, within 6 sitting days after receiving a report under this section,  
15 have copies of the report laid before both Houses of Parliament.

## Part 9—Miscellaneous

### 37—Liability of directors

20 If a body corporate is guilty of an offence against this Act, each director of the body  
corporate is guilty of an offence and is liable to the same penalty as is prescribed for  
the principal offence unless the director proves that he or she could not by the exercise  
of due diligence have prevented the commission of the offence.

### 38—General defence

25 It is a defence to a charge of an offence against this Act if the defendant proves that  
the alleged offence was not committed intentionally and did not result from any failure  
on the part of the defendant to take reasonable care to avoid the commission of the  
offence.

### 39—Service

- (1) A notice or document required or authorised to be given or sent to, or served on, a  
person for the purposes of this Act may—
- 30 (a) be given to the person personally; or
- (b) be posted in an envelope addressed to the person at the person's last known  
residential, business or (in the case of a corporation) registered address; or
- (c) be left for the person at the person's last known residential, business or (in the  
case of a corporation) registered address with someone apparently over the  
35 age of 16 years; or
- (d) be transmitted by fax or email to a fax number or email address provided by  
the person (in which case the notice or document will be taken to have been  
given or served at the time of transmission).

- 5 (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

#### 40—Evidentiary provision

In any legal proceedings—

- 10 (a) a certificate apparently signed by the Minister, or a delegate of the Minister, that on a specified date, or during a specified period, a specified person or body was or was not the holder of an operator certificate will, in the absence of proof to the contrary, be accepted as proof of the matter certified; and
- 15 (b) a certificate apparently signed by the Minister, or a delegate of the Minister, that on a specified date, or during a specified period, a specified person was or was not an authorised person under the Act will, in the absence of proof to the contrary, be accepted as proof of the matter certified; and
- (c) a map or plan apparently signed by the Surveyor-General or an officer of the Surveyor-General will be accepted, in the absence of proof to the contrary, as an accurate map or plan of the land to which it relates.

#### 41—Regulations

- 20 (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for or relating to—
- 25 (a) exemptions (conditional or unconditional) from specified provisions of this Act; and
- (b) fees in respect of any matter under this Act and their payment, recovery or waiver; and
- (c) fines, not exceeding \$10 000, for offences against the regulations; and
- 30 (d) expiation fees (not exceeding \$315) for alleged offences against the regulations; and
- (e) facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
- 35 (a) be of general application or vary in their application according to prescribed factors; and
- (b) refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time; and
- 40 (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 or a specified person or body.

- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
  - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

## Schedule 1—Related amendments and transitional provisions

### 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.

### 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—Insertion of section 66A

After section 66 insert:

#### **66A—Inducing or compelling persons to provide earnings from commercial sexual services**

- (1) A person must not do a prescribed act with the intent of inducing or compelling another to provide, or to continue to provide, to any person the whole or part of any payment or other reward derived from commercial sexual services provided by the other person.

Maximum penalty: imprisonment for 15 years.

- (2) In this section—

*prescribed act* means any express or implied threat or promise to—

- (a) improperly use any power or authority arising out of—
  - (i) an occupational or vocational position held by a person; or
  - (ii) a relationship existing between 2 or more persons;
- (b) commit an offence that is punishable by imprisonment;
- (c) make an accusation or disclosure (whether true or false)—
  - (i) of any offence committed by any person; or
  - (ii) of any other misconduct that is likely to damage seriously the reputation of any person; or

- (iii) that any person is unlawfully in Australia;
- (d) supply, or withhold supply of, any drug (whether a controlled drug or prescription drug within the meaning of the *Controlled Substances Act 1984* or otherwise).

#### 5 **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.
- 10 (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 victim had attained 18 years of age.

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

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

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

#### 20 **7—Insertion of section 16A**

After section 16 insert:

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

- 25 (1) Despite another provision of this Act, a conviction of a person for a prescribed sex work offence will be taken to be spent on the commencement of this section.
- (2) In this section—  
*prescribed sex work offence* means—
  - 30 (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
  - 35 (d) a common law offence relating to prostitution,  
(in each case, as in force before the commencement of this section).

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**Part 4—Amendment of *Summary Offences Act 1953*****8—Amendment of section 4—Interpretation**

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

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

Section 21—delete ", prostitutes" wherever occurring

**10—Substitution of section 25—Soliciting**

Section 25—delete the section and substitute:

**25—Soliciting**

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

Maximum penalty: \$750

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

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

(4) In this section—

*commercial sexual services* has the same meaning as in the *Prostitution Reform Act 2013*.

**11—Repeal of sections 25A and 26**

Sections 25A and 26—delete the sections

**Part 5—Amendment of *Workers Rehabilitation and Compensation Act 1986*****12—Amendment of section 3—Interpretation**

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

or section 6C

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**13—Insertion of section 6C**

After section 6B insert:

**6C—Additional provisions in respect of sex work**

- 5 (1) The following provisions apply in respect of the provision of commercial sexual services (not being the provision of a service that is prohibited under a law of the State):
- 10 (a) for the purposes of paragraph (b) of the definition of *contract of service* in section 3, the provision of such a service will be taken to be work of a prescribed class if—
- 15 (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
- 20 (ii) the work is performed personally by the worker (whether or not the worker supplies any equipment); and
- (iii) the worker does not employ any other person to carry out any part of the work; and
- (iv) the value of any materials supplied, or reasonably expected to be supplied, by the worker does not exceed an average of \$50 per month;
- 25 (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;
- 30 (c) in determining an application under section 103, the Corporation must not refuse to extend the protection of this Act to a self-employed person merely because the person is or has been engaged in the provision of commercial sexual services (other than where the provision of the services is prohibited under a law of the State);
- 35 (d) the regulations may exempt a specified class of persons or bodies from a specified provision of this Act.
- (2) In this section—
- commercial sexual services* has the same meaning as in *Prostitution Reform Act 2013*.

## Part 6—Transitional provisions

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

- 5 (1) This clause applies to an employer of a person who provides commercial sexual services.
- (2) An obligation under section 59(1) of the *Workers Rehabilitation and Compensation Act 1986* will be taken not to apply to an employer to whom this clause applies during the prescribed period.

**Note—**

10 That subsection provides that an employer must not employ a worker in employment to which that Act applies unless the employer is registered by the WorkCover Corporation.

- (3) Nothing in this clause—
- 15 (a) limits the operation of section 59(3) of the *Workers Rehabilitation and Compensation Act 1986*; or
  - (b) prevents—
    - 20 (i) an employer to whom this clause applies from applying for registration by the WorkCover Corporation during the prescribed period; or
    - (ii) such an application being processed by the WorkCover Corporation during the prescribed period.

- (4) In this clause—

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

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