



16 October 2015

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Dear Ms Guy

**Submission: Select Committee on the *Statutes Amendment (Decriminalisation of Sex Work) Bill 2015***

We are a grassroots campaigns movement mobilising and equipping individuals and groups to target corporations, advertisers, marketers and media that objectify women and sexualise girls to sell products and services. We are concerned about the increasing pornification of culture and the way its messages have become entrenched in mainstream society, presenting distorted and dishonest ideas about women and girls, sexuality and relationships.

As an organisation we have supporters who include survivors of the sex trade. Their recounted experiences of harm and social isolation inform the comments on the Committee's inquiry that we offer below.

Thank you for this opportunity to make a contribution to your Committee's deliberations. We would welcome the opportunity to supply more information, or speak to the Committee in person.

Kind regards

Caroline Norma, on behalf of Collective Shout



The Bill seeks to abolish an important provision of South Australia's *Criminal Law Consolidation Act* of 1935, as below. While the language of the provision is old-fashioned, its prohibition of pimping continues to be a critical legal obstacle to the development of brothels, escort agencies and other prostitution businesses in South Australia that commercialise the sexual exploitation of women. Removing this provision would effectively deregulate the sex industry in South Australia, and pave the way for prostitution businesses to proliferate, like that which has occurred in NSW since 1996. In that state, there are an estimated 400 brothels operating within 20 kilometres of the Sydney CBD, housing 'between 3,000 and 4,500' prostituted people.<sup>1</sup> While Adelaide's population is only a third that of Sydney, we might still predict that sex industry deregulation in South Australia could result in the development of more than 150 brothels in the metropolitan area. While a survey of the Punter Planet South Australia online forum (<http://forums.punterplanet.com/forum/15-south-australia/>) reveals many prostitution businesses already operating in the Adelaide metropolitan area,<sup>2</sup> their number does not exceed fifty on a generous counting. While the Hon. Michelle Lensink in July 2015 claimed in the South Australian upper house that 100 brothels operated in South Australia,<sup>3</sup> this number is likely to be at the upper-end of estimations. On the basis of the NSW experience, therefore, sex industry deregulation in South Australia could lead to a doubling of prostitution businesses operating in the Adelaide metropolitan area, or at least a 50 per cent increase.

## **Division 1—Punishment for certain common law offences**

### **270—Punishment for certain offences**

- (1) Any person convicted of any of the following common law offences, that is to say:
  - (b) keeping a common bawdy house or a common ill-governed and disorderly house;

The Committee might refer to events in Canada in recent years in which a 2013 Supreme Court ruling declared a similar legislative provision against operating a 'bawdy house' unconstitutional, and gave Canada's parliament one year to amend its statute to reflect the ruling. In response to the court's ruling, women's and indigenous organisations all over the country mobilised to resist judicial pressure to deregulate pimping, and instead persuaded Canadian MPs to vote in favour of a model of legislation that declares prostitution a crime of violence (the Nordic Model). As a result, Canada now has nationwide legislation that criminalises the sex industry and its customers.<sup>4</sup> The legislation preamble states that:

<sup>1</sup> <http://www.acon.org.au/wp-content/uploads/2015/04/NSW-Sex-Industry-Report-CSRH-2012.pdf>

<sup>2</sup> 20 Unley Rd, Adelaide; 123 David Tce, Woodville, Park; 136 North East Rd Walkerville; 212 North East Rd, Klemzig; 225 Salisbury Hwy, Salisbury; 232 Grange Rd, Flinders Park; 329 Prospect Rd, Blair Athol; 401 Regency Road, Prospect; 505 Morphett Rd, Seacombe Gardens; 523 Goodwood Rd, Colonel Light Gardens; 554 Marion Rd, Plympton Park; 1088 Old Port Road, Albert Park; Anzac Hwy, Glenelg North; 162 Morphett Rd, Glengowrie; 853 Main North Rd, Pooraka; 27 Cardwell St, Adelaide; 1 Ann St, Thebarton; Crittenden Rd, Findon; 23 Humphries Terrace, Kilkenny; 225 Henley Beach Rd, Torrensville; Ragan Rd, Morphett Vale; 675 Marion Rd, Ascot Park; 215 Regency Rd, Croydon Park; Rowels Rd, Lockleys, Unley; 207 Currie St, Adelaide; 444 Prospect Rd, Kilburn; 10 Unley Rd, Unley; 20 Unley Rd, Adelaide; 329, Port Road, Hindmarsh; 42 Charles St, Norwood; 310 Fullarton Rd, Fullarton; Davenport Terrace, Hilton; Elite Relation Centre, Norwood; Hindley Street, Adelaide; North East Rd, Hillcrest; North East Rd, Modbury.

<sup>3</sup> <https://www.parliament.sa.gov.au/Committees/Pages/Committees.aspx?CTId=3&CIId=327>

<sup>4</sup> <http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html>

...the Parliament of Canada has grave concerns about the exploitation that is inherent in prostitution and the risks of violence posed to those who engage in it...the Parliament of Canada recognizes the social harm caused by the objectification of the human body and the commodification of sexual activity...it is important to protect human dignity and the equality of all Canadians by discouraging prostitution, which has a disproportionate impact on women and children...it is important to denounce and prohibit the purchase of sexual services because it creates a demand for prostitution...it is important to continue to denounce and prohibit the procurement of persons for the purpose of prostitution and the development of economic interests in the exploitation of the prostitution of others as well as the commercialization and institutionalization of prostitution...the Parliament of Canada wishes to encourage those who engage in prostitution to report incidents of violence and to leave prostitution...the Parliament of Canada is committed to protecting communities from the harms associated with prostitution...<sup>5</sup>

Even further than the Canadian supreme court ruling, the South Australian *Statutes Amendment (Decriminalisation of Sex Work)* Bill 2015 seeks to additionally abolish the following provisions of the state's 1953 *Summary Offences Act*:

<p><b>25—Soliciting</b></p> <p>A person who—</p> <p>(a) in a public place, or within the view or hearing of any person in a public place, accosts or solicits a person for the purpose of prostitution; or</p> <p>(b) loiters in a public place for the purpose of prostitution,</p> <p>is guilty of an offence.</p> <p>Maximum penalty: \$750.</p> <p><b>25A—Procurement for prostitution</b></p> <p>(1) A person must not engage in procurement for prostitution.</p> <p>Maximum penalty:</p> <p>For a first offence—\$1 250 or imprisonment for 3 months.</p> <p>For a subsequent offence—\$2 500 or imprisonment for 6 months</p> <p>(2) A person engages in procurement for prostitution if the person—</p> <p>(a) procures another to become a prostitute; or</p> <p>(b) publishes an advertisement to the effect that the person (or some other person) is willing to employ or engage a prostitute; or</p> <p>(c) approaches another person with a view to persuading the other person to accept employment or an engagement as a prostitute.</p> <p>(3) In this section—</p> <p><i>advertisement</i> includes a notice exhibited in, or so that it is visible from, a public place.</p> <p><b>26—Living on the earnings of prostitution</b></p> <p>(1) A person who knowingly lives, wholly or in part, on the earnings of prostitution of another person is guilty of an offence.</p> <p>Maximum penalty: \$2 500 or imprisonment for 6 months.</p> <p>(2) In proceedings for an offence against subsection (1), the fact that a person lives with, or is habitually in the company of, a prostitute and has no visible lawful means of support is, in the absence of proof to the contrary, proof that that person is knowingly living on the earnings of prostitution.</p>
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Abolishing the provisions of s. 26 in particular will make intervention in the exploitation and manipulation of pimps and other sex industry entrepreneurs almost impossible for police. At present, police rely on legal provisions outlawing 'living on the earnings of prostitution' to prosecute pimping activity, which is difficult to prove through other frameworks. The modus operandi of pimps is often to enter into 'relationships' with victims, and so prostituted women are often concurrently victims of domestic violence.<sup>6</sup> While police sometimes use proceeds of crime provisions to intervene in pimping activity, this charge imposes upon police a higher evidentiary burden in relation to establishing additional crimes. It is now commonly the case that

<sup>5</sup>

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6767128&File=4&Col=1>

<sup>6</sup> <http://www.rcfv.com.au/getattachment/8DF7ADDC-4E17-4D6E-8F4F-C330C645BA9C/Project-Respect>

women live in the brothels where they are prostituted, or in nearby apartments arranged by pimps, and so the connection between pimping and living on the earnings of prostitution has become more evident and concrete than in the past.<sup>7</sup> Abolishing s. 26 would therefore deprive police of an effective criminal intervention tool, which would render vulnerable women in situations of domestic violence or migration to Australia less able to benefit from police assistance.

Deregulation of the sex industry in South Australia will create a vibrant and burgeoning prostitution market into which women will be trafficked to meet escalating levels of consumer demand. There is already evidence of the trafficking of women into Adelaide's sex industry. Chinese national Tina Fang was murdered by a prostitution buyer in an Adelaide hotel in 2015 after travelling from Sydney. There is every reason to believe Fang was being trafficked around Australia's cities; the sexual exploitation of Asian-background women in Australia is recognised as occurring on a widespread scale. A 2012 research report to the NSW Ministry of Health identified more than 50 per cent of survey respondents in approved brothels in metropolitan Sydney as of Asian or other non-English speaking country background, and nearly 45 per cent of these respondents as speaking only 'poor' or 'fair' English. A 2010 research project in which 185 female prostituted women in Sydney were surveyed, 98 (54.5%) were born overseas (predominantly China) and 82 (45.6%) were born in Australia. One hundred and seventeen (68%) were English speaking backgrounds (ESB), while 55 (32%) were from non-English speaking backgrounds (NESB).<sup>8</sup> While these demographic characteristics do not, in themselves, constitute evidence of trafficking crime within the Australian sex industry, they do point to a significant number of extremely vulnerable women as populating the industry with low-level language skills, impoverished backgrounds, and with very few contacts and networks in Australia. These cohort features are red flags for trafficking crime, and the Police Association of NSW in a recent inquiry into prostitution in that state remarked that '[s]ome of the most heinous crimes investigated by law enforcement officers...each year involve the unwilling participation of both adults and children in the sex industry'.<sup>9</sup> Crimes perpetrated through the sex industry are of a 'most heinous' order precisely because women in this industry fall into the most vulnerable cohort of people in our society, and the entrepreneurs of the industry are commonly associated with organised crime and domestic violence. Nonetheless, despite the extreme dangers and risks prostitution entails for victims and the community, the Bill seeks to displace police completely from any monitoring function in relation to South Australia's sex industry through repealing Section 6 of the 1953 *Summary Offences Act*:

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<sup>7</sup> The Queensland Prostitution Licensing Authority issued 'Sleeping accommodation for sex worker' guidelines in 2012. See <http://www.happyplace8.com.au/about/facilities-hp8/>

<sup>8</sup> Kakar SR, Biggs K, Chung C, Sawleshwarkar S, Mindel A, Lagios K, Hillman RJ. A retrospective case note review of sex worker attendees at sexual health clinics in the western suburbs of Sydney. *Sexual Health* 2010; 7: 3–7.

<sup>9</sup> [http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/1c7f8e04737d1f39ca257eb40081343f/\\$FILE/Submission%2060%20-%20Inquiry%20into%20the%20Regulation%20of%20Brothels%20-%20Redacted%20Version.pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/1c7f8e04737d1f39ca257eb40081343f/$FILE/Submission%2060%20-%20Inquiry%20into%20the%20Regulation%20of%20Brothels%20-%20Redacted%20Version.pdf)

## **Part 6—Brothels**

### **27—Interpretation**

In this Part—

*brothel* means premises—

- (a) to which persons resort for the purpose of prostitution; or
- (b) occupied or used for the purpose of prostitution;

*premises* includes a part of premises.

### **28—Keeping and managing brothels**

(1) A person who—

- (a) keeps or manages a brothel, or assists in keeping or managing a brothel; or
- (b) receives money paid in a brothel in respect of prostitution,

is guilty of an offence.

Maximum penalty: For a first offence—\$1 250 or imprisonment for 3 months.

For a subsequent offence—\$2 500 or imprisonment for 6 months.

(2) A person who acts or behaves as master or mistress, or as a person having the control or management, of a brothel will, for the purposes of this section, be taken to keep that brothel, whether he or she is or is not the keeper.

### **29—Permitting premises to be used as brothels**

A person who—

- (a) lets or sublets premises knowing that they are to be used as a brothel; or
- (b) permits premises to be used as a brothel,

is guilty of an offence.

Maximum penalty:

For a first offence—\$1 250 or imprisonment for 3 months.

For a subsequent offence—\$2 500 or imprisonment for 6 months.

### **30—Prosecutions**

(1) A prosecution cannot be instituted under this Part without the written consent of the Commissioner or a senior police officer.

(2) An apparently genuine document produced by the prosecutor and purporting to authorise a prosecution under this Part and purporting to be signed by the Commissioner or a senior police officer will be accepted, in the absence of proof to the contrary, as evidence of the consent of the Commissioner or senior police officer to the prosecution.

### **31—Determination of tenancy of brothels**

(1) Upon the conviction of the tenant, lessee or occupier of premises for permitting the premises, or a part of the premises, to be used as a brothel, the landlord or lessor may require the person so convicted to assign the lease or other contract under which the premises are held to some person approved by the landlord or lessor (which approval must not be unreasonably withheld).

(2) If a person so convicted fails within one month to assign the lease or contract in accordance with a requirement made under subsection (1), the landlord or lessor may determine the lease or other contract, but without prejudice to any rights or remedies of a party to the lease or contract in respect of anything done or omitted before the determination of the lease or contract.

(3) If the landlord or lessor, after such a conviction has been brought to his or her notice, fails to exercise the rights under subsection (1) and subsequently during the subsistence of the lease or contract the premises are again used as a brothel, the landlord or lessor will be taken to have permitted the premises to be used as a brothel.

(4) Where a landlord or lessor determines a lease or other contract under the powers conferred by this section and subsequently grants another lease or enters into another contract of tenancy to, with or for the benefit of the same person, without causing to be inserted in the lease or contract reasonable and adequate provisions for preventing the premises from being used as a brothel, he or she will, if the premises are subsequently used as a brothel, be taken to have permitted the premises to be used as a brothel.

### **32—Power of police to enter suspected brothels**

The Commissioner or a senior police officer, or any other police officer authorised in writing by the Commissioner or a senior police officer, may at any time enter and search premises which he or she suspects on reasonable grounds to be a brothel.

Sex industry deregulation reduces social opprobrium surrounding prostitution, and normalises male buying of women for sexual use. In this environment there are increasing numbers of men who become customers of the sex industry, and women must be recruited if entrepreneurs are to profit from this consumer demand.<sup>10</sup> The trafficking and ‘unwilling participation’ of women in the sex industry is one way of filling this gap between ‘supply’ and ‘demand’ for the sexual exploitation of women, and this solution particularly harms poor, foreign, and vulnerable women who are escaping situations of domestic violence.

<sup>10</sup> <http://www.catwinternational.org/content/images/article/212/attachment.pdf>

The delegation of regulatory and enforcement functions to local government effectively creates an environment of total impunity for sex industry operation. Depriving police of the power to enter suspected brothels removes any barrier sex industry entrepreneurs face to the development of their businesses in South Australia. Local government does not have the resources or expertise to regulate an industry that is heavily infiltrated by organised crime, overseas syndicates, and persons with criminal records. The proposed *Spent Convictions Act 2009* insertion allowing for pimping or living off the earnings of prostitution convictions to be wiped from the record further burdens local government with potentially overseeing large-scale sex industry development in their jurisdictions by businessmen who have undeclared criminal histories. The NSW experience amply illustrates the situation confronting local government in jurisdictions of deregulated prostitution. In that state, so-called 'massage parlours' almost totally ignore local council requirements for business registration.<sup>11</sup> They are often run by syndicates who transport women between different venues and locations. This takes place particularly for Asian-background women in the sex industry. It was reported in October 2011 that an "inner-city Sydney brothel . . . specializes in Korean prostitutes and is closely linked to the Comancheros outlaw motorcycle club and senior Asian organised crime figures" (McKenzie & Beck, 2011). In March 2008, three people were arrested in Sydney for sexually enslaving 10 Korean women, and in December 2008, a Korean woman thought to have been involved in Sydney's sex industry was found dead in an apartment (Ramachandran, 2008).

If the South Australian parliament truly seeks to reduce the prostitution of women in its jurisdiction, there are numerous examples around the world of anti-sex industry legislation that criminalise the businesses and their customers (but not its victims), and institute programs of assistance for people in the sex industry to leave prostitution and forge lives in mainstream employment and society. These include:

Ireland:

[http://www.justice.ie/en/JELR/General%20Scheme%20of%20the%20Criminal%20Law%20\(Sexual%20Offences%20Bill\)%202014.pdf/Files/General%20Scheme%20of%20the%20Criminal%20Law%20\(Sexual%20Offences%20Bill\)%202014.pdf](http://www.justice.ie/en/JELR/General%20Scheme%20of%20the%20Criminal%20Law%20(Sexual%20Offences%20Bill)%202014.pdf/Files/General%20Scheme%20of%20the%20Criminal%20Law%20(Sexual%20Offences%20Bill)%202014.pdf)

Canada:

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=6767128&File=4&Col=1>

Canada Explanatory Memorandum:

<http://www.justice.gc.ca/eng/rp-pr/other-autre/protect/p1.html>

Northern Ireland:

<http://www.niassembly.gov.uk/Documents/Legislation/Bills/Non-Executive%20Bills/Human%20Trafficking/Human%20Trafficking%20-%20As%20Amended%20at%20FCS%20-%202001-12-14.pdf>

Northern Ireland Explanatory Memorandum:

<http://www.niassembly.gov.uk/Documents/Legislation/Bills/Non-Executive%20Bills/Human%20Trafficking/EFM%20-%20Human%20Trafficking%20-%20FCS%20-%202001-12-14.pdf>

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<sup>11</sup> <http://www.gippslandtimes.com.au/story/2731267/the-wollongong-brothels-hidden-in-plain-sight/>