



Ref: 1108597

6 May 2021

Mr A Beasley
Secretary to the Committee
Parliament House
GPO Box 572
ADELAIDE 5001

By email: rswo@parliament.sa.gov.au

Dear Mr Beasley

Select Committee on Statutes Amendment (Repeal of Sex Work Offences) Bill 2020

1. I refer to the notice advising of the formation of a Select Committee of the Legislative Council to inquire into and report on the above Bill.
2. The Bill was introduced into the Legislative Council by the Hon Tammy Franks on 8 April 2020 and decriminalises sex work via amendments to the *Criminal Law Consolidation Act 1935 (SA)* and *Summary Offences Act 1953 (SA)*. The Society has provided a number of submissions in relation to this issue over a period of several years and has continued to express support for the decriminalisation of sex work. The Society's previous submissions are **enclosed** for the Committee's reference.
3. I advise the Society's Women Lawyers' Committee informs the Society's views expressed below.

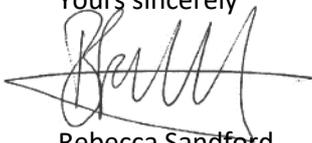
General comments

4. The Society supports the proposed Bill and maintains its support for the full decriminalisation of sex work in South Australia.
5. The Society is pleased to see that its previous submissions on the topic appear to have been addressed in the new Bill. We suggest the removal of the threat of prosecution for engaging in sex work is a significant step towards ensuring the safety, rights and wellbeing of all sex workers in South Australia.
6. Sex work was long considered, by both citizens and lawmakers alike, as immoral and unlawful. This has contributed to persistent and long-standing prejudice against sex workers, primarily female sex workers. The result is marginalisation of these workers and denial of support from the Government as legitimate workers. The repeal of sex work offences can be a starting point in changing long-held prejudicial views of sex workers, whilst acknowledging that such work has been occurring in society throughout time.
7. Further, the decriminalisation of sex work is necessary in order to improve the health and safety conditions of sex workers. We suggest the criminalisation of sex work promotes the stigma, which is a barrier to sex workers seeking medical and psychological assistance.

8. The Society is pleased that the proposed Bill does not detail licensing requirements for sex workers. As reiterated in previous submissions, the Society does not support a licencing scheme for sex workers. We note the decriminalisation of sex work in South Australia would ensure sex workers are subject to the rights and protections afforded to other members of the workforce.
9. Sex workers need to be considered as any other worker in society and be able to access all other health and employment protections. Practically, the Bill would ensure sex workers could rely on law enforcement for protection, just like every other member of the workforce. Further, we suggest the decriminalisation of sex work would greatly facilitate the prosecution of those who have committed physical and sexual abuse against sex workers.
10. Long-standing prejudicial views regarding sex work are harder to change if the very profession is considered unlawful. Lawmakers have a strong influence in helping change societal views; we suggest this Bill would be the first step in achieving that outcome.

Should the Committee have any queries, please do not hesitate to contact me.

Yours sincerely



Rebecca Sandford

PRESIDENT

T: (08) 8229 0200

Encl: Letter from the Society to Hon Tammy Franks MLC re Statutes Amendment (Decriminalisation of Sex Work) Bill 2018, 31 July 2019.

Letter from the Society to Hon Emily Bourke MLC re Statutes Amendment (Decriminalisation of Sex Work) Bill 2018, 1 August 2019.

Letter from the Society to Hon Michelle Lensink MLC re Statutes Amendment (Decriminalisation of Sex Work) Bill 2015, 5 July 2017.

Letter from the Society to Select Committee of the Legislative Council re Statutes Amendment (Decriminalisation of Sex Work) Bill 2015, 16 October 2015.

Letter from the Society to Hon Stephanie Key MP re the Statutes Amendment (Decriminalisation of Sex Work) Bill 2014, 1 October 2014.



Ref: 900622

31 July 2019

The Hon Tammy Franks MLC
Parliament House
North Terrace
ADELAIDE SA 5000

By email:

Dear Ms Franks

Statutes Amendment (Decriminalisation of Sex Work) Bill 2018

1. I refer to your email of 26 June 2019 in relation to the Statutes Amendment (Decriminalisation of Sex Work) Bill 2018 ("the Bill") and our subsequent meeting on 11 July.
2. The Society notes the Legislative Council has made a number of amendments to the 2018 version of the Bill.
3. Following our meeting of 11 July, the Society has considered the Bill and provides comment below with respect to the recent amendments, with a focus on the expansion of police search powers and the prohibition on advertising commercial sexual services.

Power of police to enter premises used for commercial sexual services

4. The Society notes clause 20A which provides police with the power to enter into, break open and search premises at which commercial sexual services are provided, if the officer has reasonable cause to suspect that an offence has been recently committed, or is about to be committed; or there is anything that may afford evidence as to the commission of an offence; or there is anything that may be intended to be used for the purpose of committing an offence.
5. The amendment appears to mirror section 674) of the *Summary Offences Act 1953 (SA)* (SOA) with two major differences. First, police can only invoke such powers with respect to premises used for 'commercial sex services'; and the power is not limited to those officers carrying general search warrants, it is available to any police officer.
6. Presently, under section 32 of the SOA, police officers are able to enter and search premises at any time, which he or she suspects on reasonable grounds to be a brothel. It appears that the amendments are seeking to provide police with similar powers, without the oversight of the general search warrant process.
7. The Society questions the need for such powers, given the raft of powers available to police under existing legislation that could be utilised with respect to brothels and any potential connected illegal activities, including organised crime. Please see below a table of relevant police powers for your information:

Number	Legislation	Section(s)
1.	<i>Summary Offences Act 1953 (SA)</i>	s 67; ss68-72;
2.	<i>Controlled Substances Act 1984 (SA)</i>	ss 50; 52;
3.	<i>Criminal Assets Confiscation Act 2005 (SA)</i>	ss 172-177
4.	<i>Crimes Act 1914 (Cth)</i>	s3E – s3F
5.	<i>Criminal Investigation (Extraterritorial Offences) Act 1984 (SA)</i>	s 54
6.	<i>Firearms Act 1977 (SA)</i>	s32(3)
7.	<i>Migration Act 1958 (Cth)</i>	s487D – s487E
8.	<i>Serious and Organised Crime (Control) Act 2008 (SA)</i>	s33

8. The Society notes the concerns raised by you in our meeting of 11 July, with respect to an increase in police covert operations and the targeting of sex workers by police. These concerns are shared by the Members of the Society's Women Lawyers' Committee who are aware of a number of instances of police searching the homes and premises of sex workers (under section 32 of the SOA) where no evidence is discovered, and no charges have been laid. Given that the amendment essentially mirrors the powers under section 32 of the SOA, there are concerns that this may lead to an overuse of search powers and have unintended consequences for sex workers.

Prohibition on advertising commercial sexual services

9. The Society notes that clause 22A seeks to prohibit the advertising of commercial sexual services by way of signage visible from a public place, as well as the distribution of unsolicited leaflets, handbills or other documents.
10. As discussed at our meeting, it is noted that the amendment does not appear to apply to online, radio and television advertising. However, the Society further notes that the Regulations will contain the types of advertising that will be permitted under the legislation.
11. The Society considers it would not be appropriate for the Bill to inadvertently restrict the advertising of commercial sex services to the extent that it completely undermines the commercial viability of the industry.

General comments

Amendments to the Return to Work Act 2014

12. The Society provided comment with respect to an earlier version of this Bill to the Honourable Stephanie Key MP in 2014. **Enclosed** for your information is a copy of a submission dated 1 October 2014. In this submission, the Society noted its concerns with respect to the proposed amendments to the *Workers Rehabilitation and Compensation Act 1986*. The same concerns remain with respect to the Bill and the proposed amendments to the *Return to Work Act 2014*.

13. The Society suggests that these provisions are reconsidered and appropriate amendments are made to Regulation 5 of the *Return to Work Regulations 2015*.

Commercial sexual services

14. The Society notes that the Regulations will contain “acts” that are excluded from the definition of commercial sexual services. This is likely to have wider implications (i.e. what falls within the ambit of the definition of commercial sexual services, subject to the provisions of the legislation). The Society may have further comment with respect to the subsequent Regulations.

Minister to provide assistance

15. The Society notes clause 21B which provides that a person who is engaged in sex work and who wishes to leave sex work may apply (without charge) to the Minister for assistance to do so. However, it is also noted within the provision that an offer of assistance under the section does not create legally enforceable rights or entitlements.
16. The Society queries whether additional funding has been allocated with respect to the amendment and how it may apply in practice, given that that it gives rise to no legally enforceable rights.
17. As noted at our meeting, the Society remains in support of the decriminalisation of sex work in South Australia. It was suggested by you that further amendments are likely to be made to the Bill in the House of Assembly. The Society would be pleased to review any such amendments.

Yours sincerely



Amy Nikolovski
PRESIDENT



Ref: 900788

1 August 2019

Hon Emily Bourke MLC
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Ms Bourke

Statutes Amendment (Decriminalisation of Sex Work) Bill 2018

1. I refer to our meeting of 8 July in relation to the Statutes Amendment (Decriminalisation of Sex Work) Bill 2018 (“the Bill”).
2. Further to our meeting, you have provided the Society with a copy of amendments to the Bill (“the Amendments”) for which you seek comment. The Society has considered the Amendments and provides comment below with respect to two of the key amendments proposed: the provision of commercial sexual services where children are present; and the licensing of sex worker establishments.
3. The Society has also provided comment to the Hon Tammy Franks MLC in relation to the current version of the Bill, which contains a number of amendments made by Members of the Legislative Council. A copy of this submission is **enclosed** for your information.

Provision of commercial sexual services where children are present

4. The Society notes Amendment No 1, which seeks to prohibit the provision of commercial sexual services where children are present. It was noted by you at our meeting that you are concerned that given the prevalence of sex work being conducted from home, children may be exposed to the provision of commercial sexual services.
5. The Society notes that under the *Children and Young People (Safety) Act 2017*, section 17 defines harm as “physical harm or psychological harm (whether caused by an act or omission) and, without limiting the generality of this subsection, includes such harm caused by sexual, physical, mental or emotional abuse or neglect”.
6. Furthermore, section 18(1) of the *Children and Young People (Safety) Act 2017* provides that a child or young person who has suffered harm (or there is a likelihood that the child or young will suffer harm), that child or young person will be taken to be at risk and subject to the provisions of the Act, including intervention and removal.
7. The Society suggests that the existing child protection legislation would be better suited and more appropriately utilised to address your concerns.

Licensing of sex worker establishments

8. The Society notes Amendment No 6 seeks to create a licensing scheme for sex worker establishments.
9. The Society referred the Amendments to a number of its Special Interest Committees for consideration and comment. There were concerns raised that a licensing scheme would undermine, rather than contribute to safety in the industry and have the effect of re-criminalising sex work. In particular, that it is likely to perpetuate the fear in the industry of the police, as workers may continue not to report assaults and other criminal behaviour against them if concerned about whether the brothel is compliant with the licencing scheme.
10. The operation of a licensing scheme requires sole operators wishing to work co-operatively in the same premises to have a licence or else be exposed to prosecution. Often, safety is a key reason why workers wish to operate out of the same premises. A licence may be cost prohibitive and those who cannot afford a licence may be forced to continue working illegally or work in less safe conditions, i.e. alone.
11. The Society notes under the Victorian licensing scheme, brothels are only allowed to operate in an industrial area and sex workers are only otherwise allowed to go to client's houses. There have been a number of concerns raised about the safety of sex workers in Victoria as a result of the licensing scheme conditions.
12. Similarly, in Queensland a report to the Prostitution Licensing Authority noted that sex workers may be in a more precarious position as a result of the licensing scheme with respect to occupational health and safety hazards as they cannot work in small groups to provide safety backup for one another unless they seek to register as a brothel.¹
13. Licensing schemes have been criticised by sex work advocates for creating a two-tiered sex industry where a small percentage of the industry can meet compliance requirements while the majority of the industry cannot and is forced to operate outside the legal framework. This is inconsistent with the underlying objective of decriminalisation.
14. It has been reported in Queensland, that while a small brothel industry is being regulated, it operates in a context of a much larger industry comprising both legal sole operators, who remain unregulated, and brothels and escort agencies which continue to operate illegally and outside legislation.² The licensing scheme itself is expensive to administer, with licensing fees only covering 50% of the costs of the scheme (the rest is tax payer funded).³
15. A licensing scheme may also increase the workload of police in monitoring minor compliance offences related to the licensing scheme, which could be better diverted to policing serious crimes, including policing that protects the safety of women in the community.

¹ Anne Edwards, 2009. *Selling Sex; Regulating Prostitution in Queensland: A report to the Prostitution Licensing Authority*, available at: <http://www.pla.qld.gov.au/Resources/PLA/reportsPublications/sellingSex/documents/PLA%20SSRPIQ%20Report%20Final.pdf>

² Ibid.

³ Respect Inc, 2018. DecrimQLD Resources, available at: <https://respectqld.org.au/decriminalise-sex-work/resources/>

16. The Society notes the proposed amendments include a maximum penalty of 2 years imprisonment or \$100,000 if a person operates a sex worker establishment without a licence. The penalties for non-compliance under the proposed licensing scheme, are significantly higher than the current maximum penalties for the provision of sex work.
17. Furthermore, the Society notes the following issues/concerns with the scheme for your consideration:
 - 17.1 There is no appeal right under the scheme where the Commissioner for Consumer Affairs refuses to grant an application for a licence;
 - 17.2 The Commissioner also has the right to cancel a license for any reason and without any obligation to provide reasons for doing so;
 - 17.3 The ability for authorised officers to enter any licensed brothel and require any person present to state their personal details may expose workers to harassment; and
 - 17.4 There is a reversal of the onus of proof in clause 32I, such that a defendant in proceedings under the proposed legislation would need to provide proof if they disagreed with certain allegations contained in an Information.
18. At our meeting on 8 July, you noted your concerns with the lack of regulatory framework proposed by the Bill. In particular, you are concerned that with respect to brothel owners, no fit and proper person test would apply, as is the case in other industries.
19. The New Zealand model was discussed in this regard, whereby sex work is decriminalised and a brothel operator certification system is in place. To be eligible for a certificate, applicants must be over the age of 18, be a citizen or permanent resident of New Zealand or Australia, and not have any disqualifying convictions. Small owner-operate brothels (no more than four sex workers) are exempt from having to hold a brothel operator's certificate.
20. As you are aware, the Society supports the decriminalisation of sex work in South Australia. It is concerned that the proposed licensing scheme is inconsistent with the key aims and benefits of decriminalisation, particularly for sex workers, as has been the experience in other jurisdictions. If additional regulation is introduced (i.e. certificate system etc), it must be consistent with the aims of decriminalisation and should not in effect re-criminalise sex work or aspects of sex work (i.e. street work etc.)

I trust these comments have been of assistance. The Society would be pleased to provide any further comment or assistance.

Yours sincerely



Amy Nikolovski
PRESIDENT

Encl: Letter to Tammy Franks dated 31 July 2019.



5 July 2017

The Honourable Michelle Lensink MLC
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Ms Lensink

Statutes Amendment (Decriminalisation of Sex Work) Bill 2015

1. I refer to your email to Leah Marrone of 5 June 2017 in relation to a further submission from SA Police (SAPOL) to the Select Committee on the Statutes Amendment (Decriminalisation of Sex Work) Bill ("the Select Committee") dated 23 May 2017.
2. The Society has considered the further submission from SAPOL and notes with disappointment that the position of SAPOL has changed and that it now opposes the Statutes Amendment (Decriminalisation of Sex Work) Bill ("the Bill").
3. The Society noted in our oral submissions to the Select Committee in August 2016, decriminalisation will improve the health and safety of workers in this industry and is the principal means by which their safety and workplace rights can be assured.
4. The Society notes that SAPOL are concerned that the Bill seeks to repeal Part 6 of the *Summary Offences Act 1953* (SA) which provides SAPOL with the power under section 32 to at any time, enter and search premises which police suspect on reasonable grounds to be a brothel. We note however that this power does not require a requisite suspicion of any specific offending.
5. Whilst decriminalisation as proposed under the Bill will repeal the section above, brothels would be subject to the same high level of regulation that other legitimate businesses in Australia are subject to, including in the areas of occupational health and safety, immigration and the extensive provisions of the criminal law.

Existing applicable regulations and search powers

6. As a result of decriminalisation, sex workers would now be protected under the *Work Health and Safety Act 2012* (SA). SafeWork SA inspectors have extensive powers and functions as per section 160 of the *Work Health and Safety Act*, including powers of entry under sections 163 and 165.
7. SAPOL are currently afforded a wide range of search powers under various criminal laws in South Australia, including the broad power to obtain a general search warrant under section 67 of the *Summary Offences Act 1953* (SA) and further search powers under sections 67 to 72 of the Act.
8. Additional powers of entry also exist under section 52 of the *Controlled Substances Act 1984* (SA), section 174 of the *Criminal Assets Confiscation Act 2005* (SA), sections 4-5 of the *Criminal Investigation (Extraterritorial Offences) Act 1984*, section 32 of the *Firearms Act 1977* (SA) and section 33 of the *Serious and Organised Crime (Control) Act 2008* (SA).
9. The *Migration Act 1958* (Cth) also confers search powers under section 487D with respect to offences under the *Migration Act*. Section 3E-3F of the *Crimes Act 1914* (Cth) also provides search powers in relation to the Commonwealth offences.
10. Furthermore, section 66 of the *Criminal Law Consolidation Act 1935* (SA) in relation to sexual servitude is retained under the Bill. A person who compels another to provide or to continue to provide commercial sexual services is guilty of the offence of inflicting sexual servitude.
11. This power would enable SAPOL to enter premises where it is suspected that sexual servitude is taking place. This power would apply in circumstances such as the one noted by SAPOL on page 6 of its submission in relation to sexual servitude by an Asian worker.
12. The provisions listed above are not exhaustive, however, demonstrate the extensive legislative powers already in place that will provide adequate safeguards to workers in a decriminalised industry.

Decriminalisation

13. The Society notes SAPOL's concerns in the final paragraph of its submission with respect to decriminalisation:

“without comprehensive regulatory controls, SAPOL believes the draft Bill would not provide safeguards to ensure that people are not exploited, organised crime does not control the industry, and brothels do not become criminal sanctuaries”.

14. The Society notes that decriminalisation of the sex industry would allow those in the industry to participate with police on an equal, unleveraged basis, they can interact with police, provide information, provide other forms of communication, report issues, in a way where they do so from a position of being involved in lawful activity.
15. The Society highlights the importance of the Bill in enabling those that want to leave the industry to do so and move onto other employment, particularly in relation to spent convictions.
16. The Society notes that its position is supported by the findings of the NSW Select Committee on the Regulation of Brothels, which found that there would be no public purpose to re-criminalise sex work and noted the system of decriminalisation of sex services industry in NSW should remain as medical and other experts had concluded that it has provided favourable public health outcomes.
17. Furthermore the NSW Select Committee considered evidence in relation to the regulatory system that currently exists in Victoria, including a register and licensing regime for sex workers in NSW. It did not support these measures on the basis it supports a system of full decriminalisation and furthermore, the registration of sex workers provides the potential for a lifetime of stigma for sex workers.
18. The Society reaffirms its support of the full decriminalisation of sex work in South Australia. Enclosed are the Society's submissions of 24 May 2016, 16 October 2015 and 1 October 2014.
19. The Society supports the recommendation of the Select Committee on the *Statutes Amendment (Decriminalisation of Sex Work) Bill 2015* that the Bill be passed without amendment.

I trust these comments are of assistance. We would be pleased to provide further comment or assistance.

Yours sincerely



Stephen K Hodder
CHIEF EXECUTIVE



16 October 2015

RJP; sr

Leslie Guy
Secretary
Select Committee of the Legislative Council
Parliament House
North Terrace
ADELAIDE SA 5000

by email: leslie.guy@parliament.sa.gov.au

Dear Ms Guy,

Statutes Amendment (Decriminalisation of Sex Work) Bill 2015

I refer to your letter dated 17 September 2015, received 21 September 2015. Thank you for inviting the Society to provide a written submission on the *Statutes Amendment (Decriminalisation of Sex Work) Bill 2015* ("the Bill").

By way of background, the Society was recently invited by the Honourable Stephanie Key MP to comment on a draft of the Bill. As the Bill has been introduced into Parliament without amendments, the comments we provide in this submission are the same as those we have put to Ms Key MP.

In addition, the Society confirms that the Bill is identical to the *Statutes Amendment (Decriminalisation of Sex Work) Bill 2014* ("the 2014 Bill"), but for amendments to recognise the repeal of the *Workers Rehabilitation and Compensation Act 1986*, and implementation of the *Return to Work Act 2014*. The Society previously provided Ms Key MP with a written submission on the 2014 Bill, and I enclose a copy of the same.

In addition to the comments that the Society made in respect of the 2014 Bill, the Society says the following:

The Bill seeks to accomplish two things:

1. to decriminalise sex work (subject to certain exceptions); and
2. to amend the *Equal Opportunity Act 1984*, the *Spent Convictions Act 2009* and the *Return-to-Work Act 2014* to provide sex workers with workplace and anti-discrimination protections afforded to other employees in the State.

In the event sex work is decriminalised, the Society considers the proposed amendments in 2 above must necessarily follow. This is because sex work would be treated as lawful employment.

Equal Opportunity amendments

The Bill seeks to amend the *Equal Opportunity Act 1984* to make it unlawful for prospective employers, education providers and providers of goods or services (among others) to discriminate against an individual because they are or have been a sex worker.

Spent Convictions amendments

Under the Bill, prior convictions for a prescribed sex work offence are taken to be spent on the commencement of proposed section 16A of the *Spent Convictions Act 2009*. This would be necessary to give proper effect to Parliament declaring sex work to be lawful employment.

Return to Work Act amendments

Logically, amendments to the *Return to Work Act 2014* (“RTW Act”) would include sex workers as a class of employees who have rights to compensation and the other benefits of workers’ compensation.

The Bill will provide new protections for sex workers to manage injuries or illnesses that may arise from their employment.

There is a question as to whether the proposed section 6A of the *RTW Act* is one for that Act itself, or for regulations made under it, given the particular operation of the *RTW Act*. The Society made this point in greater detail in the 1 October 2014 letter with respect to the *Workers Rehabilitation and Compensation Act 1986*.

Work Health and Safety

A consequence of decriminalisation of sex work will be that the work will be subject to the *Work Health & Safety Act 2012*. The Act imposes obligations on persons conducting a business or undertaking to ensure the safety of the workers they engage to perform work on their behalf, and enables Work Health and Safety inspections of workplaces.

Other observations and comments

With the decriminalisation of sex work, sex workers would, for the most part, be considered employees if engaged by an employer to provide sex work to clients.

I trust that these comments are of assistance.

Yours sincerely

A handwritten signature in black ink, consisting of the letters 'R', 'P', and 'R' in a stylized, cursive font. The signature is written on a white background.

Rocco Perrotta
PRESIDENT



1 October 2014

117.1
MB; rjp

The Honourable Stephanie Key MP
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Ms Key

Statutes Amendment (Decriminalisation of Sex Work) Bill 2014

I refer to your letter of 18 July 2014, and thank you for inviting the Society to consider the *Statutes Amendment (Decriminalisation of Sex Work) Bill 2014* (the Bill). Without taking a view as to the policy issue of whether sex work should be decriminalised, we provide the following comments.

1. Various bodies of the United Nations have called for decriminalisation including
 - the UN committee on the Elimination of Discrimination against Women;
 - the UN special rapporteur on the right to health;
 - the United Nations Development Programme; and
 - UNAIDS.¹
2. Australian legal inquiries have also recommended the decriminalisation of sex work. For example, as long ago as 1977 the Commonwealth Royal Commission into Human Relationships saw criminalisation of this work as an inappropriate use of the criminal law.²

¹ See the Amnesty International policy document on Sex Work which gives a good referenced history of international human rights law and approaches in this area:
<http://www.amnesty.se/upload/files/2014/04/02/Summary%20of%20proposed%20policy%20on%20sex%20work.pdf>

² See: See Recommendation 48 <http://apo.org.au/research/royal-commission-human-relationships>

3. Sex work occurs and will continue to occur in our community regardless of criminalisation. A recent UN study showed that there was no evidence that decriminalisation increased the instances of sex work.³ Similarly, the Ministry of Justice in New Zealand reported in 2008 that since decriminalisation in New Zealand (in 2003) the sex industry had not increased in size.⁴
- 4 One of the aims of the Bill is to improve working conditions for sex workers. We suggest that many of the current operators of brothels would not pass a 'fit and proper' person test and therefore be eligible to legally operate a brothel if the Bill was passed. Many operators of brothels appear to engage in other illegal activity. It would seem very likely therefore that many brothels would continue to operate unlawfully.
- 5 Sex workers who are drug addicts would be unlikely to qualify to work in a 'legal' brothel. Any benefits from the Bill, if introduced, will only be for sex workers who become lawfully employed as a result of it.
- 6 Without having undertaken the necessary research, as to the experience in Victoria and New South Wales, for example, it is not possible to assess the practical result of legalisation.
- 7 The Bill therefore may be of limited use to some sex workers. However, for those who would be lawfully employed, there would appear to be obvious advantages. We make the following comments in relation to these workers.
 - 7.1 Decriminalisation of sex work eliminates the risk that clients of sex workers can exploit sex workers with threats of reporting them to police.
 - 7.2 Sex workers face exceptionally high risks to their health and safety. These risks could be reduced by decriminalisation which
 - a. allows workers to work together in a more secure environment;
 - b. reduces the reluctance to report violent attacks due to fear of self-incrimination;⁵
 - c. empowers workers to insist on safe (protected) sex and enables Work Health and Safety inspections of workplaces by the State regulator (SafeWork SA). There is also evidence that decriminalisation increases access to sexual health services and reduces the risk of HIV and AIDS;⁶

³ See: <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2012/10/18/new-un-report-takes-a-stark-look-at-links-between-sex-work-hiv-and-the-law-in-asia-and-the-pacific/>; and <http://sexliesducttape.me/2014/07/05/amnesty-international-decriminalising-sex-work-what-are-the-issues/>

⁴ See: <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>

⁵ See for example: <http://www.theguardian.com/commentisfree/2008/jun/29/gender.law>

⁶ See generally: <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2012/10/18/new-un-report-takes-a-stark-look-at-links-between-sex-work-hiv-and-the-law-in-asia-and-the-pacific/>;

- d. enables Workers Compensation when the workers are injured at work.

In responding to a previous draft of the Bill, in a letter of 16 November 2011, the Society indicated that there was a need for there to be consideration of the position of sex workers in relation to workers compensation benefits.

The present Bill includes provisions (Part 6) amending the *Workers Rehabilitation and Compensation Act* (the WR&C Act) so as to expand the definition of employer to include, in some circumstances, a principal where the legal relationship is not employment. This is achieved by a minor (referential) amendment to s3 – the definition provision, and the insertion of a new s6C. Proposed s6C is in a familiar form – namely the form of extension of the concept of employment which applies by virtue of Regulation 5 of the *Workers Rehabilitation and Compensation Regulations* (the Regulations) in the case of building work, certain forms of entertainment work, some driving work and a variety of other forms of work.

While, as a matter of fundamental principle, the better course is for key definitional matters to be addressed in legislation rather than by way of delegation to the Executive of the power to define terms (as occurs in s3 by the definition of contract of employment referring to prescribed classes), it is clear that in Workers Compensation matters, that argument has been lost.

Under the WR&C Act, the Executive has the power, subject to Parliament's disallowance power, to include and to exclude certain forms of employment from the scheme.

If the legal effect of a provision such as the proposed s6C (insofar as it includes certain sex workers within the concept of workers) is appropriate, then it is appropriate that it be included by amendment to Regulation 5 of the Regulations. A similar point can be made in respect of that part of proposed s6C which prevents there from ever being a finding that a sex worker is employed by his or her client.

Consequently, we would not support the proposed amendments to the WR&C Act (or similar provisions being included in the Bill presently before Parliament designed to change the SA Workers Compensation scheme). However, we would support there being consultation with Government as

http://www.afao.org.au/library/hiv-australia/volume-13/vol.-12-number-2/sex-work-legislation-stands-in-the-way-of-australias-commitments?utm_content=buffer2114f&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer#.VBje_RY6_Z4; Sex Workers tell recent International AIDS conference in Melbourne that decriminalisation would lead to the reduction in HIV : <http://www.smh.com.au/national/health/decriminalisation-would-prevent-hiv-say-sex-workers-20140720-zv1bo.html>; and <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>

to whether or not it would propose to introduce any Regulations in respect of sex workers and their coverage under the WR&C Act (or its proposed successor).

In our letter of 16 November 2011 we also raised questions about whether or not certain types of injury should be excluded from coverage of the Act (something for which the Act does not presently provide). By implication the opposite question also arises: should certain types of injury be deemed to arise from sex work in the absence of proof to the contrary. The November 2011 letter recommended discussion of those matters with WorkCover and the appropriate Minister. That the Bill now makes no reference to these issues may be the consequence of the absence of such discussions or may be the outcome of such discussions. It may well be the case that it will be appropriate for such discussions to occur (or be revisited) in the context of the reform of the workers compensation scheme if the Bill is passed.

- e. Empowers sex workers to collectively fight for rights at work through unions or other formal associations.

8 In the Society's view

- 8.1 The Bill appears to strike a good balance between protecting vulnerable persons (under 18 year olds etc.) while putting in place rules that allow adults who choose to engage in this work to do so in a legitimate way.
- 8.2 The Bill provides for full decriminalisation and does not leave grey areas. This would provide clarity of the law, rather than a half way approach that has been provided in some jurisdictions such as in the United Kingdom.⁷
- 8.3 The elimination of offences of prostitution in both statute and common law would support the proposal.
- 8.4 Prior convictions of sex work offences should be spent on the commencement of the Act. Having these convictions spent could make it easier for workers with convictions who have remained in the industry (because of limited options, due to their criminal record) to consider leaving the industry.
- 8.5 The *Equal Opportunity Act 1984* (SA) may require amendment so that if employers such as schools and religious bodies do not wish to employ a sex worker, such institutions can apply for an exemption under the Act; and
- 8.6 Lawful brothels may be a safer place for sex workers to work rather than them working alone⁸

⁷ See for example: <http://www.independent.co.uk/news/uk/politics/mps-call-for-prostitution-to-be-legalised-but-demand-tough-new-penalties-on-pimps-9164069.html>

Thank you for your invitation to meet to discuss the Bill. We will be in touch to establish a suitable time for us to do so.

In the meantime, I trust these comments are of assistance.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'C' shape followed by a wavy line.

Morry Bailes
PRESIDENT

⁸ See for example: <http://www.canberratimes.com.au/act-news/brothels-safer-place-to-work-former-prostitute-tells-students-20130224-2ezy0.html>; <http://www.abc.net.au/news/2009-08-15/prostitution-laws-failing-sex-workers/1391654>



1 October 2014

117.1
MB; rjp

The Honourable Stephanie Key MP
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Ms Key

Statutes Amendment (Decriminalisation of Sex Work) Bill 2014

I refer to your letter of 18 July 2014, and thank you for inviting the Society to consider the *Statutes Amendment (Decriminalisation of Sex Work) Bill 2014* (the Bill). Without taking a view as to the policy issue of whether sex work should be decriminalised, we provide the following comments.

1. Various bodies of the United Nations have called for decriminalisation including
 - the UN committee on the Elimination of Discrimination against Women;
 - the UN special rapporteur on the right to health;
 - the United Nations Development Programme; and
 - UNAIDS.¹
2. Australian legal inquiries have also recommended the decriminalisation of sex work. For example, as long ago as 1977 the Commonwealth Royal Commission into Human Relationships saw criminalisation of this work as an inappropriate use of the criminal law.²

¹ See the Amnesty International policy document on Sex Work which gives a good referenced history of international human rights law and approaches in this area:
<http://www.amnesty.se/upload/files/2014/04/02/Summary%20of%20proposed%20policy%20on%20sex%20work.pdf>

² See: See Recommendation 48 <http://apo.org.au/research/royal-commission-human-relationships>

3. Sex work occurs and will continue to occur in our community regardless of criminalisation. A recent UN study showed that there was no evidence that decriminalisation increased the instances of sex work.³ Similarly, the Ministry of Justice in New Zealand reported in 2008 that since decriminalisation in New Zealand (in 2003) the sex industry had not increased in size.⁴
- 4 One of the aims of the Bill is to improve working conditions for sex workers. We suggest that many of the current operators of brothels would not pass a 'fit and proper' person test and therefore be eligible to legally operate a brothel if the Bill was passed. Many operators of brothels appear to engage in other illegal activity. It would seem very likely therefore that many brothels would continue to operate unlawfully.
- 5 Sex workers who are drug addicts would be unlikely to qualify to work in a 'legal' brothel. Any benefits from the Bill, if introduced, will only be for sex workers who become lawfully employed as a result of it.
- 6 Without having undertaken the necessary research, as to the experience in Victoria and New South Wales, for example, it is not possible to assess the practical result of legalisation.
- 7 The Bill therefore may be of limited use to some sex workers. However, for those who would be lawfully employed, there would appear to be obvious advantages. We make the following comments in relation to these workers.
 - 7.1 Decriminalisation of sex work eliminates the risk that clients of sex workers can exploit sex workers with threats of reporting them to police.
 - 7.2 Sex workers face exceptionally high risks to their health and safety. These risks could be reduced by decriminalisation which
 - a. allows workers to work together in a more secure environment;
 - b. reduces the reluctance to report violent attacks due to fear of self-incrimination;⁵
 - c. empowers workers to insist on safe (protected) sex and enables Work Health and Safety inspections of workplaces by the State regulator (SafeWork SA). There is also evidence that decriminalisation increases access to sexual health services and reduces the risk of HIV and AIDS;⁶

³ See: <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2012/10/18/new-un-report-takes-a-stark-look-at-links-between-sex-work-hiv-and-the-law-in-asia-and-the-pacific/> ; and <http://sexliesducttape.me/2014/07/05/amnesty-international-decriminalising-sex-work-what-are-the-issues/>

⁴ See: <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>

⁵ See for example: <http://www.theguardian.com/commentisfree/2008/jun/29/gender.law>

⁶ See generally: <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2012/10/18/new-un-report-takes-a-stark-look-at-links-between-sex-work-hiv-and-the-law-in-asia-and-the-pacific/>;

- d. enables Workers Compensation when the workers are injured at work.

In responding to a previous draft of the Bill, in a letter of 16 November 2011, the Society indicated that there was a need for there to be consideration of the position of sex workers in relation to workers compensation benefits.

The present Bill includes provisions (Part 6) amending the *Workers Rehabilitation and Compensation Act* (the WR&C Act) so as to expand the definition of employer to include, in some circumstances, a principal where the legal relationship is not employment. This is achieved by a minor (referential) amendment to s3 – the definition provision, and the insertion of a new s6C. Proposed s6C is in a familiar form – namely the form of extension of the concept of employment which applies by virtue of Regulation 5 of the *Workers Rehabilitation and Compensation Regulations* (the Regulations) in the case of building work, certain forms of entertainment work, some driving work and a variety of other forms of work.

While, as a matter of fundamental principle, the better course is for key definitional matters to be addressed in legislation rather than by way of delegation to the Executive of the power to define terms (as occurs in s3 by the definition of contract of employment referring to prescribed classes), it is clear that in Workers Compensation matters, that argument has been lost.

Under the WR&C Act, the Executive has the power, subject to Parliament's disallowance power, to include and to exclude certain forms of employment from the scheme.

If the legal effect of a provision such as the proposed s6C (insofar as it includes certain sex workers within the concept of workers) is appropriate, then it is appropriate that it be included by amendment to Regulation 5 of the Regulations. A similar point can be made in respect of that part of proposed s6C which prevents there from ever being a finding that a sex worker is employed by his or her client.

Consequently, we would not support the proposed amendments to the WR&C Act (or similar provisions being included in the Bill presently before Parliament designed to change the SA Workers Compensation scheme). However, we would support there being consultation with Government as

http://www.afao.org.au/library/hiv-australia/volume-13/vol.-12-number-2/sex-work-legislation-stands-in-the-way-of-australias-commitments?utm_content=buffer2114f&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer#.VBje_RY6_Z4; Sex Workers tell recent International AIDS conference in Melbourne that decriminalisation would lead to the reduction in HIV : <http://www.smh.com.au/national/health/decriminalisation-would-prevent-hiv-say-sex-workers-20140720-zv1bo.html>; and <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/documents/report.pdf>

to whether or not it would propose to introduce any Regulations in respect of sex workers and their coverage under the WR&C Act (or its proposed successor).

In our letter of 16 November 2011 we also raised questions about whether or not certain types of injury should be excluded from coverage of the Act (something for which the Act does not presently provide). By implication the opposite question also arises: should certain types of injury be deemed to arise from sex work in the absence of proof to the contrary. The November 2011 letter recommended discussion of those matters with WorkCover and the appropriate Minister. That the Bill now makes no reference to these issues may be the consequence of the absence of such discussions or may be the outcome of such discussions. It may well be the case that it will be appropriate for such discussions to occur (or be revisited) in the context of the reform of the workers compensation scheme if the Bill is passed.

- e. Empowers sex workers to collectively fight for rights at work through unions or other formal associations.

8 In the Society's view

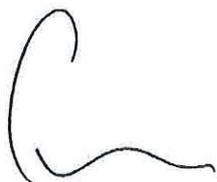
- 8.1 The Bill appears to strike a good balance between protecting vulnerable persons (under 18 year olds etc.) while putting in place rules that allow adults who choose to engage in this work to do so in a legitimate way.
- 8.2 The Bill provides for full decriminalisation and does not leave grey areas. This would provide clarity of the law, rather than a half way approach that has been provided in some jurisdictions such as in the United Kingdom.⁷
- 8.3 The elimination of offences of prostitution in both statute and common law would support the proposal.
- 8.4 Prior convictions of sex work offences should be spent on the commencement of the Act. Having these convictions spent could make it easier for workers with convictions who have remained in the industry (because of limited options, due to their criminal record) to consider leaving the industry.
- 8.5 The *Equal Opportunity Act 1984* (SA) may require amendment so that if employers such as schools and religious bodies do not wish to employ a sex worker, such institutions can apply for an exemption under the Act; and
- 8.6 Lawful brothels may be a safer place for sex workers to work rather than them working alone⁸

⁷ See for example: <http://www.independent.co.uk/news/uk/politics/mps-call-for-prostitution-to-be-legalised-but-demand-tough-new-penalties-on-pimps-9164069.html>

Thank you for your invitation to meet to discuss the Bill. We will be in touch to establish a suitable time for us to do so.

In the meantime, I trust these comments are of assistance.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'C' shape followed by a wavy line.

Morry Bailes
PRESIDENT

⁸ See for example: <http://www.canberratimes.com.au/act-news/brothels-safer-place-to-work-former-prostitute-tells-students-20130224-2ezy0.html>; <http://www.abc.net.au/news/2009-08-15/prostitution-laws-failing-sex-workers/1391654>