

## Overview of the existing laws surrounding sex work in South Australia

The laws surrounding sex work in South Australia are contained in the Summary Offences Act (1953) and the Criminal Law Consolidation Act (1935-1976). Apart from some very minor changes, most of these laws have remained intact since they were first enacted, some more than 50 years ago. Several new laws were enacted in 2000 that deal with 'sex slavery', minors involved in commercial sexual services and the deceptive recruitment of staff to provide commercial sexual services. To date there have only been rare arrests and no successful convictions for any of these three newer offences

While it is true that the act of commercial sex itself is not illegal in South Australia, there is however a raft of laws that pertain to commercial sex that occurs in a brothel, effectively rendering brothel based sex work activities illicit. Traditionally brothels have made up a substantial proportion of sex industry businesses because brothels are the preferred mode of working and organising commercial sexual services. South Australian law, therefore, contains a range of offences that aim to suppress the sex work that occurs in brothels.

These offences range from those that have been most commonly used against sex workers and others involved in commercial sex businesses; *Section 21: [b] of the Summary Offences Act* that effectively makes it illegal to be on a premises frequented by prostitutes without a reasonable excuse; *Section 28 [b] of the Summary Offences Act* which is the main charge that has been used in relation to sex work itself and charges sex workers with ".....receive money paid in a brothel in respect of prostitution"; through to offences for "keeping" or managing or assisting to manage a brothel (*Section 28 [1] [a],[2]*), "procuring" a person to become a prostitute (*The Summary Offences Amendment Act 1953: Section 25A*), living on the earnings of prostitution" (*Section 26:[1] of the Summary Offences Act 1953*) and "keeping a ...common bawdy-house" (*The Criminal Law Consolidation Act Section 270 [1] [b]*).

All of these laws are clearly aimed at the organisers and those associated with sex work, however, these laws can and have been applied to sex workers also. Additionally, there are several laws that target landlords and tenants who permit their premises to be used as a brothel. These

offences are contained in *Section 29 [a], [b]* and *section 31 [1],[2],[3],[4]* of *The Summary Offences Act*.

The definition of a brothel is pivotal to enforcement of most of the above charges, because law enforcers must prove that the alleged offence occurred in a brothel, or, indeed that a premises is a brothel. The definition contained in the Summary Offences Act (1953) Section 27 states that: "brothels means premises-

(a) to which persons resort to for the purposes of prostitution

or

(b) occupied or used for the purposes of prostitution

(premises includes a part of premises)

This definition is quite broad and could even, for example, be used to encompass an escort agency office/premises if it were to openly operate and admit to providing commercial sexual services rather than 'escort' services. However, while escort agencies continue to maintain that they only provide 'company' for clients, it is difficult for law enforcers to prove otherwise and thus brothels are usually held to be premises where commercial sex takes place at that location on a regular or consistent basis.

A client's home is not considered to be a brothel even if a client uses sex work services at their residence regularly. The same applies to hotels/motels under normal circumstances. Occasionally, however, when rooms have been let out on a regular basis for the purpose of commercial sex, hotel proprietors/managers have been charged with "keeping a brothel".

A sex worker's own home may be defined as a brothel and she/he may be charged with 'keeping a brothel' even if the 'private' sex worker is the only person working from the premises. Advertising usually alerts the police to suburban sex workers working discreetly from residential settings even if neighbours and surrounding residences are not aware of the existence and/or nature of their neighbour's home based business.

The definition of what constitutes sex work is also very broad. The Summary Offences Act (1953) states that "prostitutes are persons offering themselves as participants for reward in a physical act of indecently for the sexual gratification of another". A 1996 court appeal ruled that a nude, 'Thai' massage (a euphemism for a body to body

massage or 'body slide') was intended to provide lewd or sexual gratification and was therefore an act of prostitution.<sup>1</sup> Therefore over the years, 'massage' workers have regularly been charged with a range sex work offences.

In summary, the laws pertaining to sex work mainly relate to brothel based sex work although offences such as 'procuring' and 'living on the earnings' and the newer sex work offences relating to sex slavery and employing minors can be applied in other sex industry contexts such as escort or visiting services. However, in practice, these laws are usually applied to sex industry businesses that can be determined to be brothels whether or not they operate overtly as brothels or as masked businesses such as massage studios.

Escort based sex work, although a more modern context for sex industry work, flourished in light of the prohibitive brothel based sex industry laws particularly during the 1990s. Escort agencies also operate as masked businesses, in that operators maintain that they provide escorts for the company of clients rather than for sexual services because the latter could leave operators open to the sex industry related charges of 'living off the earnings' and 'procuring' a person to become a sex worker.

Street based sex work has been a minor feature of the South Australian sex industry throughout the second half of the 20<sup>th</sup> century despite being a historically favoured mode of sex working across many cultures and throughout history. However, South Australia experienced a surge in street based sex work from the late 1990s onwards. Policing of sex workers in street locales has resulted in sex workers being frequently charged with section 25 [a], [b] of the Summary Offences Act that makes it illegal "to solicit or loiter in a public place for the purpose of prostitution". This law was amended some years ago and is the only sex work law which is equally applicable to clients and as it is to sex workers. The reality is though that clients are rarely, if ever, charged with soliciting offences.

At the time of writing in mid 2006, a street based sex worker was the first person in more than 25 years to be charged under Section 13 of the Summary Offence Act [13] as a person who "...habitually consorts with reputed thieves, prostitutes, and persons without visible means of support ...". Police acknowledge that they are using this law in an attempt

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<sup>1</sup> Begley v Police, 24 October 1996, Judgement no. S5851

to remove the persistent street based sex work scene in the Western suburbs that has evolved since 2000.

In contrast to the persistent targeting of street based sex workers by police for arrest, there have been comparatively few sex industry related charges in other sectors of the sex industry in recent years. In times prior to 2000, the brothel sector of the South Australian sex industry was very heavily policed and most sex workers and support staff working in brothels could expect to be cautioned or charged with sex work related offences. In 2000 a successful legal challenge was made to the admissibility of the evidence from sex industry 'clients' upon which the police relied quite heavily. This prompted SAPOL to take a different approach to policing the sex industry which has encompassed an active presence in the form of a 'section' formerly Vice & Gaming; currently 'Licensing' dedicated to overseeing activities in the sex industry through a regular visits and intelligence gathering. Police still manage to move brothels on without arrests by informing local councils and estate agents of alleged illegal commercial sexual activities.