

# 1. What is decriminalisation?

## SIDAC Information Sheet

This information sheet is part of a series prepared for the Sex Industry Decriminalisation Action Committee (SIDAC) to support the decriminalisation of sex work in South Australia in 2019.



### Three legal options

Sex work will always exist, but is up to us to determine and guarantee, the conditions and safety of those involved. The current Bill proposes to decriminalise the industry in the best interests of both sex workers and the broader community.

A recent Select Committee of the South Australian Parliament summarised the three basic legal models available and reported that “the evidence heard and submitted to this inquiry supported the proposed amendments to the Bill” (which mirrors the 2019 decriminalisation bill).

*Report of the Select Committee on the Statutes Amendment (Decriminalisation of Sex Work) Bill 2015*  
(Legislative Council, May 2015)

### DECRIMINALISATION – what we want

Decriminalisation repeals laws that criminalise or overly restrict sex work. In doing so, sex work then becomes subject to the same laws and conditions (and restrictions) that apply to other workers, businesses and workplaces.

Decriminalisation removes crimes that target the practice of commercial sex. Crimes will still occur as they do in every other sector and the police will be able to take appropriate action. We just want them to stop taking inappropriate action.

Decriminalisation *does not* remove laws that legitimately target criminal behaviour that may arise within sex work. For example, sexual exploitation of minors will remain a serious crime (in fact, the current Bill strengthens these protections).

The premise is that an adult person (of any sex/gender) has the right to choose to provide a sexual service on a commercial basis. Normal regulation will still apply as it does for other businesses: taxation law; health and safety requirements; local planning and business controls; and so on. Decriminalisation does not mean deregulation.

### CRIMINALISATION is what we have today

Criminalisation prohibits sex work, or aspects of sex work, so that those engaging in relevant activities can be prosecuted for criminal offences. South Australia has a criminalised model mainly given effect through the *Criminal Law Consolidation Act* and the *Summary Offences Act*.

Soliciting, procurement, keeping a brothel and ‘living on the earnings’ of sex work are typical summary offences. In an affront to the right to privacy, the police are empowered to enter suspected brothels simply based on ‘suspicion’.

### What will still be unlawful after decriminalisation in South Australia?

It will still be illegal to –

- cause a nuisance or harass other people in public
- involve minors or those with cognitive disabilities in sex work
- traffic people for sex work or consort with organised crime
- compel, coerce or defraud someone into sex work
- rip off clients, or
- assault someone (just to name a few).

Decriminalisation will allow sex workers to access workplace health and safety protections and seek assistance from the police without the fear of arrest or harassment. It will also finally address the stigmatisation and discrimination that comes with being described as a criminal or “common prostitute”. There is nothing wrong with being common or a prostitute, it simply is no longer acceptable to maintain this class based and sexist legal terminology.

Decriminalisation also means that people leaving the sex work industry cannot be discriminated against for their past profession should they choose to seek other types of work.

Local Councils will apply all their existing planning and environmental powers and regulations to sex work as they do to any other industry.

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### LEGALISATION (sometimes: 'Regulation')

Costly and intrusive legalised systems are sometimes proposed to manage sex work under highly regulated arrangements. This sees some aspects still criminalised with restrictions often imposed on the size, location and promotion of businesses. Sex workers may have to be registered (which they, and SIDAC, strenuously oppose).

The problems of legalised models are evident in Queensland and Victoria where a two-tiered system is created and nonlegal sectors that outnumber legal sex workers still operate for various reasons: small groups and individual sex workers may want to operate cooperatively and independently from the larger 'brothel' business model; some workers will not risk the stigmatisation that comes with being named on a public register.

#### Equal Opportunity and Return to Work Acts

The SA Decriminalisation Bill extends some Equal Opportunity Act protections to current and former sex workers as the work will continue to carry an unfair stigma and support discrimination (e.g. in gaining alternative employment).

The Decriminalisation Bill is supported by South Australia's Equal Opportunity Commissioner.

*Necessary adjustments also are made to the Return to Work Act (2014).*

### The Nordic Criminal Model

The 'Nordic Model' (or Swedish model) criminalises sex work by targeting clients and other third parties. The claim is that this approach does not victimise sex workers but protects them from harm. However, this has not been the case in practice.

It is not possible to criminalise one side of a commercial sex transaction without harming all parties involved. This is demonstrated in places that have adopted the model. In Sweden it has forced workers into more dangerous work situations, broken up homes and families and targeted ethnic minorities and migrants.

Similar impacts are evident in France and Ireland, where sex workers and their supporters are organising to overturn this form of prohibition. Sex workers assert that they are adults who have made a choice about their bodies and sexual lives. They refuse to accept the status of victim that 'saviours' try to force upon them.

At the end of 2018, 55 people had been arrested for prostitution offences in Ireland since the introduction of the 'Nordic model' but only 2 were clients. More disturbingly, the level of violence experienced by sex workers escalated as they were forced to work in more clandestine situations. In March 2019, two years after the 'Swedish model' law came into effect in Ireland, reported violent crime involving sex workers increased by 92%.

### Trafficking?

Similarly, some police, professional moralists and opportunist politicians gain from conflating voluntary commercial sex work with 'trafficking'. This is currently the situation in the United States where anti-trafficking campaigns are fuelling 'moral panic' against legitimate sex work. Conflating the crime of trafficking with sex work undermines the capacity to properly respond to trafficking as a noxious aspect of globalised labour conditions. Legitimate anti-trafficking work is undermined.

Furthermore, when sex work is criminalised or legalised, this pushes the most vulnerable workers, i.e. those who are trafficked or coerced, further underground, making access to support services or, if necessary, the police, very difficult. Decriminalisation allows for greater access to those workers who genuinely need support, while allowing autonomous sex workers to continue their work.

### Spent Convictions Act

The SA Decriminalisation Bill seeks to extend the protections of this Act to sex workers and former sex workers so that a conviction for certain sex work related offences will not be disclosed on a person's criminal record.