

**Report of the Prostitution
Law Review Committee on
the Operation of the
Prostitution Reform Act 2003**

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Foreword

This report is the culmination of five years work of a Committee that first met on 24 March 2004, with few of us knowing each other prior to that time. We were nominated because of our specialist knowledge by the Ministers of Justice, Health, Police, Commerce, Local Government and Women's Affairs (in consultation with the Minister of Youth Affairs) and the New Zealand Prostitutes' Collective. The Committee comprised a nun, sex workers, brothel operators, a general practitioner, an academic, a city councillor, a criminologist, a public health official, social workers, representatives of non-governmental organisations (NGOs), and a retired policeman. These seem like an unlikely combination of people discussing an issue as highly charged as prostitution. With such diverse backgrounds, and perhaps differing agendas, it may have been difficult for any sense of cohesion and agreement to have emerged in our discussions.

However, the basis for working collaboratively was established through concentrating our efforts on the human rights, welfare, occupational health and safety of sex workers, and the prohibition of the use of young persons in prostitution – that is, the 'purpose' of the Prostitution Reform Act 2003 (PRA). This collaboration was achieved through deliberately not focussing on the political or moral aspects of the sex industry, as is frequently done by those advocates for and against its decriminalisation. We recognised that the legislation was a shift from a moralist approach to prostitution to a health and human rights approach. It was stipulated early in our deliberations that, as much as possible, our report should be substantiated through evidence-based research. This approach brought a disparate Committee together to do real work, and over time form bonds that made the Committee work effectively. Although we did not all agree all the time on various aspects of our work, all Committee members were able to work together professionally to achieve this report.

We were supported in this regard by officials from the Ministry of Justice who at times pulled us up to ensure the maintenance of evidence-based discussions. We restrained ourselves from responding to what, at times, were provocative statements in the media. We suspected such comments were gross exaggeration and hyperbole; some were certainly uninformed comments, especially in the early days of the life of this legislation. We were determined not to make any statements until we had the benefit of all the research that we had commissioned.

The Committee fulfilled the first of its statutory purposes, to assess the number of sex workers in New Zealand at the time of decriminalisation through the release of its first report, *The Nature and Extent of the Sex Industry in New Zealand: An Estimation*, in 2005.

The Committee was required to wait until three years had elapsed from the commencement of the PRA (Section 42(1)(b)) before conducting the research and other work to inform this report. The major influence of our methodology was determined by the work of Dr Elaine Mossman of the Crime and Justice Research Centre of Victoria University through her Evaluation Framework for the review of the PRA. Three major phases of research and work were the foundation of this report.

- *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers* by the Department of Public Health and General Practice, University of Otago, Christchurch. This study included a survey of 772 sex workers.
- Key informant interviews with NGOs, brothel operators and community groups and a literature review of overseas models of prostitution law reform by the Crime and Justice Research Centre of Victoria University.

- Gathering of information from government agencies and local authorities by the Ministry of Justice.

The Committee is aware that during the period research was conducted for this report the New Zealand economy was performing well and unemployment was at record lows. It is not known what impact these factors may have had on the nature of the sex industry.

This report reflects the detailed research undertaken, as well as the Committee's collective experience. We are confident this comprehensive report offers practical recommendations to the Government and the public about prostitution issues.

Acknowledgements

The process of gathering information for and writing the Committee's report has involved many people. The Committee would like to take this opportunity to thank everyone involved throughout the last five years work. The Committee wishes to acknowledge the support provided by Ministry of Justice officials, in particular, Victoria Crawford, Jo Gascoigne, Carey Hibbert, Angela Lee, Lisette Nolan, Chelly Walton, Fiona Jackson, Rebecca Crowe, Carrie Gage, and Sue Easthope. Support was also provided by contractors Vivienne Morrell, Judith Spier, and Martin Lee.

This report would not have been possible without the work of researchers from Otago University's Christchurch School of Medicine: Gillian Abel, Dr Lisa Fitzgerald, and Cheryl Brunton, and from Victoria University's Crime and Justice Research Centre: Dr Elaine Mossman and Pat Mayhew.

The New Zealand Prostitutes' Collective also provided invaluable information for this review. The Committee wishes to thank Calum Bennachie for undertaking the advertisement audits. The Committee also wishes to thank Calum, Annah Pickering and Anna Reed for arranging for the Committee to view brothels, and the brothel operators who allowed the Committee to visit their businesses.

The Committee also wishes to acknowledge the input of government agencies. This report has benefited from information supplied by the Ministries of Justice, Health, Social Development, Youth Development, and Women's Affairs, the Department of Labour, Inland Revenue, and the New Zealand Police. Local Government New Zealand provided invaluable assistance in canvassing the views of territorial authorities. The Committee wishes to thank all the territorial authorities who provided feedback on the impact of the PRA.

The Committee also received submissions from interested organisations and members of the public, including a petition presented via the Justice and Electoral Committee. The Committee considered all the points made by these submitters and would like to thank them for their input.

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Executive Summary

Introduction

This report presents the Prostitution Law Review Committee's (the Committee) review of the operation of the Prostitution Reform Act 2003 (PRA) three to five years after the Act's commencement, in June 2003. The purpose of the PRA was to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use); create a framework to safeguard the human rights of sex workers and protect them from exploitation; promote the welfare and occupational health and safety of sex workers; contribute to public health; and prohibit the use in prostitution of persons under 18 years of age. The PRA also established a certification regime for brothel operators. This report fulfils the Committee's obligations to report on specific matters and make recommendations to the Minister of Justice on its findings.

The Committee's report is research based and draws heavily on the work of the Christchurch School of Medicine (CSOM) and Victoria University's Crime and Justice Research Centre (CJRC). The CSOM and CJRC reports are available on the Ministry of Justice website: www.justice.govt.nz.

Estimation of the Number of Sex Workers in New Zealand

Baseline estimates of the size of the sex industry were provided in the Committee's first report, *The Nature and Extent of the Sex Industry in New Zealand: An Estimation* (2005). To the extent possible, the baseline data is compared with more recent estimates carried out for this report. However, caution must be applied to any estimate of the numbers of people involved in the sex industry. Direct comparisons between pre- and post-decriminalisation figures are possible only for Christchurch where an estimation using comparable methods was undertaken in 1999 (CSOM, 2007).

In the Committee's first report it was estimated that there were 5,932 sex workers in New Zealand. The current report estimates the number of sex workers to be 2,332 in the areas included in the study. The Committee does not consider that this means the numbers of sex workers in New Zealand have declined by 3600 over five years. Rather, the different estimates are the result of the limitations of the initial data collection methods, and the more robust methodology used to estimate numbers in the current report.

The research divides the industry into three sectors: private indoor workers, street-based sex workers, and managed workers (generally those working in brothels). A 2007 estimation of numbers of sex workers in five centres (Auckland, Wellington, Christchurch, Hawke's Bay and Nelson) found a total of 2332 sex workers. A comparison between the number of sex workers in Christchurch in 1999 and 2006 shows that the total has stayed approximately the same over that period. The study does not indicate that there has been any increase in the number of street-based sex workers in Christchurch over that period, contrary to some public perceptions.

Accurately counting the number of sex workers remains difficult. However, the Committee endorses the findings of the CSOM that the enactment of the PRA has had little impact on the numbers of people working in the sex industry.

The PRA and Human Rights

It is important to determine the exact nature of the human rights that must be safeguarded when considering the human rights aspect of the purpose of the PRA. There is no fundamental human right not to be discriminated against on grounds of occupation.

After considering international human rights to which New Zealand is a signatory, New Zealand case law, and the views of sex workers, the Committee concludes that the PRA safeguards the following rights: the right of those under 18 not to be used in sex work; the right of adults not to be forced to engage in sex work, including the right to refuse a particular client or sexual practice; and the right not to be subject to exploitative, degrading employment practices.

When surveyed by CSOM about their perception of rights protected by the PRA, over 90% of sex workers in each sector felt that they have legal rights under the PRA. Over 60% of sex workers in each sector felt that they were more able to refuse to provide commercial sexual services to a particular client since the enactment of the PRA.

The Committee concludes that the PRA has had a marked effect in safeguarding the right of sex workers to refuse particular clients and practices, chiefly by empowering sex workers through removing the illegality of their work. The Committee is very concerned that it appears there are still some managed sex workers who are being required by brothel operators to provide commercial sexual services against their will on occasion.

Health, Safety and Well-being of Sex Workers

Both the CSOM and CJRC reported high use of condoms throughout the industry. However, this was not necessarily due to the legal prohibition on the provision of unsafe commercial sexual services. Many said that they had always practised safe sex. It was generally felt that most sex workers had already adopted such practices as a result of the effective HIV/AIDS prevention campaign that was established in the late 1980s. Studies show a very low rate of HIV/AIDS incidence amongst sex workers.

The PRA brought the sex industry under the Health and Safety in Employment Act 1992. Research indicates that there is a high level of awareness of Occupational Safety and Health (OSH) requirements in the sex industry, but compliance cannot be measured as there is no system of regular inspections of brothels by Medical Officers of Health, and the Department of Labour.

The majority of sex workers interviewed felt that the PRA could do little about violence that occurred, though a significant minority thought that there had been an improvement since the enactment of the PRA. Of those feeling in a position to comment, the majority felt sex workers were now more likely to report incidents of violence to the Police, though willingness to carry the process through to court is less common.

Avoiding or Exiting the Sex Industry

Research identified a combination of push and pull factors at play of people entering, remaining and exiting the sex industry. The most common reason for entering the industry across all sectors is financial. Around 93% of sex workers surveyed by CSOM cited money as a reason for both entering and staying in the sex industry. The most effective way to ensure people do not enter the sex industry is to help them find other means of earning money. Second, exiting the industry is difficult, and often involves several attempts. Third, by no means all sex workers want to exit, and some sex workers find it offensive that they should be being offered assistance to leave a job where they are quite happy. There are as many reasons for exiting as there are reasons for entering the sex industry and a 'one size fits all' approach to support and assistance in exiting will not be appropriate.

Despite the perception that most sex workers are coerced into entering the sex industry, only a very small number of sex workers reported being made to work by someone else at the time of entry and after (an average of 3.9% across the three sectors).

The most significant barriers to exiting are loss of income, reluctance to lose the flexible working hours available in the sex industry, and the camaraderie and sense of belonging that some sex workers describe.

The CJRC was commissioned by the Committee to provide a model of best practice for assisting sex workers to exit the industry. The Committee recommends that this practice be adopted in New Zealand. There is currently little dedicated support available for those wishing to exit the sex industry. The Committee recommends that central government make available adequate funding for non-governmental organisations (NGOs) to provide a range of services to the sex industry, including assistance with exiting for those who wish to exit.

The Brothel Operator Certification System

The Committee was charged with considering whether the brothel certification regime is effective or could be improved, whether any other agency or agencies could or should administer it, and whether a system is needed for identifying the location of businesses of prostitution.

The Committee recommends that the eligibility criteria for holding a certificate be maintained, with the addition of a criterion that a certificate holder must be willing to facilitate inspections. The Department of Labour should be the lead agency to manage the inspection of brothels. Information about good employment practices and where to obtain further advice and support should be supplied with brothel operators' certificates. The register should continue to be administered by the Auckland District Court, and there need not be a requirement to link certificates to businesses. Certificates should remain valid for three years from issue.

The Use of Under Age People in Prostitution

The PRA makes it an offence to arrange for or to receive, or to facilitate or receive payment for, commercial sexual services from a person under 18. The offences carry a maximum penalty of seven years' imprisonment. It is not an offence for a person under the age of 18 to provide commercial sexual services.

The Committee considers that the threshold of 18 years should remain. The existing threshold acknowledges the vulnerability of people used in under age prostitution and recognises that there is a difference between commercial sexual activity and other sexual activity. The Committee also

believes that the PRA should remain consistent with the United Nations Convention on the Rights of the Child and the International Labour Organisation Convention 182.

The CSOM survey found that under age people used in prostitution made up 1.3% of the total number of sex workers surveyed. The Committee does not consider the PRA has increased under age involvement in prostitution. The Committee believes the passage of the PRA has raised awareness of the problem of under age prostitution, and that this is a positive consequence. A very small percentage of young people who are sexually active are active in the context of prostitution. Further, few young people who can generally be termed 'at risk' are involved in prostitution.

The Committee is concerned that 17 year olds 'fall between the cracks' in terms of government support, being too old to be eligible for assistance from Child Youth and Family Services, and too young to be eligible for income support. The Committee was advised that the Independent Youth Benefit (IYB), available to 17 year olds in certain circumstances, is difficult for some young people to access. The Committee recommends that the Ministry of Social Development develop strategies to assist at risk young people in accessing the financial support they are entitled to.

Street-Based Sex Workers

The Committee endorses the findings of the CSOM study that 'the numbers of street-based sex workers have remained stable since the enactment of the PRA, with comparable numbers on the streets to estimates done prior to decriminalisation'. The CSOM survey found that the street-based sector made up 11% of the sex industry in 2006, making it by far the smallest sector.

Complaints about street-based sex workers have predominantly been made about the Christchurch and Manukau street prostitution areas. The Committee concludes the effects of street-based prostitution can be managed through proactive measures taken by local councils (the provision of lighting and street cleaning), Police (Police presence to discourage disorderly or anti-social behaviour), and NGOs (providing support services). Further, because under age people are more likely to work in the street sector, a Police presence is necessary to discourage clients seeking contact with under age people. Such Police action should be used in conjunction with other child protection measures.

The Committee considers that the purpose of the PRA, particularly in terms of promoting the welfare and occupational health and safety of sex workers, cannot be fully realised in the street-based sector. The Committee recognises the danger street work poses to sex workers, and acknowledges the concern and upset it causes communities. The Committee considers street-based sex workers should be encouraged to either move to a safer, indoor setting, or leave sex work altogether.

Response of Territorial Authorities to the PRA

The Committee surveyed territorial authorities (TAs) on the impact of the PRA. Most had no problems with the sex industry in their district, and had received few complaints about it.

The Committee is concerned that some TAs have attempted to force small owner-operated brothels (SOOB) to work in the same area as larger brothels. A SOOB is a brothel in which no more than four sex workers work and each worker retains control over their individual earnings. TA district plans that require brothels to be located in industrial and commercial zones mean sex workers working from SOOBs would be at greater risk of violence and/or robbery, as they may not have the security arrangements that a larger brothel has. In the Committee's view, a SOOB should be regulated in the same manner as any other business run from home, that is, by general rules provided for in a district plan regarding home-based employment.

The Committee considers that legislating for nationwide rules as to the location of brothels would be inappropriate. Each locale has its own needs and considerations. The management of the sex industry in each district is best left to the TAs, who can most effectively respond to the needs of their communities consistent with the aims of the PRA.

Employment Conditions for Sex Workers

Prior to the enactment of the PRA, the illegal status of the sex industry meant that sex workers were open to coercion and exploitation by managers, pimps, and clients.

Research indicates that there has been some improvement in employment conditions, but this is by no means universal. Generally, brothels which had treated their workers fairly prior to the enactment of the PRA continued to do so, and those which had unfair management practices continued with them.

The Committee considers it would be inappropriate for it to make a declaration on what the employment status of all brothel-based sex workers should be. This is, and should be, a matter of choice for individual sex workers and brothel operators, with disputes to be dealt with through the employment resolution processes and the courts. Some workers would prefer the benefits and certainty of employee status, others the freedom and flexibility of independent contractor status. The enactment of the PRA has empowered sex workers by removing the taint of criminality from their occupation, and part of that empowerment is to take control of their employment relationships.

The Committee recommends that the sex industry, with the help of the Department of Labour and others, moves towards written, best practice employment contracts (either 'of service' or 'for service') becoming standard for sex workers working in brothels. This would strengthen the human rights, employment conditions, health and safety, and well-being of sex workers that the PRA foreshadows.

List of the Committee's Recommendations

Estimation of the Number of Sex Workers in New Zealand (Chapter 2)

- The New Zealand Prostitutes' Collective (NZPC) maintains the databases of street-based sex workers created by outreach workers in the Auckland, Wellington and Christchurch.
- NZPC continues to monitor numbers of brothel-based workers and SOOBs.
- Any future research into prostitution in New Zealand focuses on the health and safety of sex workers, their employment status, and human rights, rather than solely the numbers of people involved in the industry.

The PRA and Human Rights (Chapter 3)

- Information on the requirements of the PRA regarding the right to refuse a client be made clear in information provided to brothel operators upon application for a brothel operator's certificate.

Health, Safety and Well-being (Chapter 4)

- The Occupational Safety and Health service of the Department of Labour consider supplementing the OSH guidelines for the sex industry with smaller, user friendly pamphlets.
- The government provides additional funding to the Ministry of Health to enable Medical Officers of Health to carry out regular inspections of brothels.
- Police and the sex industry look to the approach taken in Christchurch as a mutually beneficial way of managing their relationship.

Avoiding or Exiting the Sex Industry (Chapter 5)

- The government make available adequate funding for the establishment/continuation of NGOs that can provide a range of services to the sex industry, including assistance with exiting for those who wish to exit.
- Relevant government agencies should have an ongoing duty to provide NGOs with information on services available to sex workers wishing to exit, who could then have access to this information from a 'one stop shop'.
- Support for those who wish to leave the industry should be based on best practice principles that are tailored to meet the needs of the individual worker.
- Sex workers who do not wish to leave the industry should also be offered support and advice from NGOs. Provision of advice and information on health and safety, professional best practice, rights and responsibilities and available government services should be available to all sex workers.

The Brothel Operator Certification System (Chapter 6)

- The current certification system be maintained, but the PRA be amended to extend the period of certification validity to three years.
- The PRA be amended to ensure the list of certificate holders be available to be searched by Police, Immigration, OSH, and Medical Officers of Health for the purpose of facilitating the inspection of brothels and brothel operators.
- Comprehensive information on brothel operators' rights and responsibilities should be provided to applicants at the time they receive a certificate.

- Applicants must agree to facilitate inspections to obtain a certificate.

The Use of Under Age People in Prostitution (Chapter 7)

- A collaborative approach between Police, the Ministry of Social Development, the Ministry for Youth Development and relevant NGOs should be taken to assist at risk youth.
- The Ministry for Youth Development and the Ministry of Social Development deliver increased funding to NGOs working with at risk youth.
- Section 48 of the Children, Young persons and Their Families Act 1989 be amended to include young people aged 17 years.
- The Ministry of Social Development should ensure when approached by, or on behalf of, young persons at risk, that they are adequately supported to prevent the young person being used in prostitution in order to survive.

Street-Based Sex Workers (Chapter 8)

- Legislative approaches that aim to criminalise street-based sex workers should be avoided.
- Street-based sex workers should be supported to work safely and with consideration for local communities.
- Street-based sex workers should be encouraged to find alternatives to street-based sex work. NGOs should be adequately funded to facilitate this.
- Local government should adopt practical solutions to manage areas used by street-based sex workers and their clients.

Response of Territorial Authorities to the PRA (Chapter 9)

- Local Government New Zealand (LGNZ) should consider updating the Prostitution Reform Act Guidelines issued in 2003.

Employment Conditions (Chapter 10)

- The sex industry should be encouraged through education, consultation and advocacy to move to the situation where brothel-based sex workers have a best practice-based written contract with a brothel operator.
- The decision as to whether to enter a contract of service, or a contract for service, be left entirely to the parties to the contract, with the general employment law, the Employment Relations Authority and the Employment Court available as for any industry.
- The Department of Labour and IRD should work with the sex industry to clarify any misconceptions about the right to say 'no' regardless of sex workers' employment status and the choices that are available to sex workers regarding their employment status.
- Information to be provided to brothel operators during the certification process about their employment responsibilities should include providing information to sex workers about their employment rights.

