

**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.

Table of Contents

Foreword	3
Acknowledgements	5
Table of Contents	6
List of Tables	11
Executive Summary	13
1. Introduction	21
1.1 Legal Situation Prior to the PRA	21
1.2 The Prostitution Reform Act 2003 (PRA)	22
1.2.1 Passage of the PRA	22
1.3 Purpose and Main Features of the PRA	22
1.3.1 Prohibitions on Use in Prostitution of Persons Under 18 Years	22
1.3.2 Health and Safety Requirements	23
1.3.3 Small Owner-Operated Brothels	23
1.3.4 Brothel Operator Certification System	23
1.3.5 Territorial Authorities May Make Bylaws	23
1.4 Review of the PRA	24
1.4.1 The Committee Process	24
1.4.2 Statutory Purpose	24
1.4.3 Additional Matters Considered	24
1.5 Report Based on Research	25
1.5.1 University of Otago's Christchurch School of Medicine	25
1.5.2 Victoria University's Crime and Justice Research Centre	26
1.5.3 Other Research Used	27
1.5.4 Ministry of Justice	27
2. Estimation of the Numbers of Sex Workers in New Zealand	29
2.1 Introduction	29
2.1.1 Caution Regarding Estimates	29
2.2 Baseline Data From the Committee's First Report	30
2.2.1 Survey of New Zealand Police	30
2.2.2 First Advertisement Audit	31
2.3 Recent Estimates of the Numbers of Sex Workers in New Zealand	32
2.3.1 Estimation of Numbers of Sex Workers	32
2.3.2 2007 Re-estimation	34
2.3.3 Auckland Results	34
2.3.4 Comparison with 1999 Christchurch Study	35
2.4 Further Advertisement Audits	35
2.5 Advertisements for Vacancies	38
2.6 Changes in the Sex Industry Since Decriminalisation	39
2.6.1 Advertising Practices	39
2.6.2 Technology	39
2.6.3 Decriminalisation as a Reason for Entering the Sex Industry	39
2.6.4 Claims that Numbers Have Increased	40
2.7 Committee's Conclusion	40
3 The PRA and Human Rights	43
3.1 International Conventions	43
3.1.1 Case Law	44
3.1.2 Sex Workers' Perceptions	44

3.2	Right for Adults Not to be Forced to Engage in Sex Work	45
4	Health, Safety and Well-being	49
4.1	General Health of Sex Workers	49
4.1.1	Safer Sex	50
4.2	Occupational Health and Safety Requirements and Rights	51
4.2.1	Knowledge of OSH Requirements and Rights	51
4.2.2	Adherence to OSH Requirements	53
4.3	General Safety of Sex Workers	55
5	Avoiding or Exiting the Sex Industry	61
5.1	Introduction	61
5.2	Reasons for Entering and Remaining in the Sex Industry	61
5.2.1	Entering the Sex Industry	61
5.2.2	Expected Length of Stay in the Sex Industry	64
5.2.3	Taking 'Breaks' from the Industry	66
5.2.4	Remaining in the Sex Industry	67
5.3	Impact of the PRA on Exiting	69
5.4	Exiting the Sex Industry	70
5.4.1	Sex Workers Who Do Not Wish to Exit	70
5.4.2	Sex Workers Who Want to Exit	73
5.4.3	Reasons for Wishing to Exit	73
5.4.4	Barriers to Exiting	75
5.5	Best Practice for Exiting	77
5.5.1	Holistic Approach	78
5.5.2	Dealing with Changes of Mind	79
5.5.3	Facilitating Free Choice	79
5.5.4	Dedicated Services and 'Brokerage'	79
5.5.5	Building Trusting Relationships	79
5.5.6	Adequate Resourcing	79
5.5.7	Public Education	80
5.5.8	Outreach	80
5.5.9	Location of Services	80
5.6	Support for Those Who Wish to Exit Currently Available	81
6	The Brothel Operator Certification System	85
6.1	Introduction	85
6.1.1	Rationale Behind the System	85
6.2	How the System Operates	86
6.2.1	Who Requires a Certificate?	86
6.2.2	The Application Procedure	87
6.2.4	Penalties	89
6.2.5	Register of Brothel Operators	89
6.2.6	Licences Required under Local Bylaws	89
6.3	Victoria's Brothel Licensing Regime	90
6.3.1	How Victoria's Regime Operates	90
6.3.2	Criticism of the Victorian Licensing Regime	90
6.4	The New Zealand Certification System	91
6.4.1	Information From Brothel Operators	91
6.4.2	Small Owner-Operated Brothels	91
6.4.4	Brothel Operators' Comments on Inspections	93
6.4.5	Numbers of Operator Certificates Issued	93
6.5	Does the Current System Work?	93
6.6	The Way Forward	94
6.6.1	Who Should Require a Certificate?	94

6.6.2	Who Should be Eligible for a Certificate?	94
6.6.3	Information Should be Provided when Certificates Issued	94
6.6.4	Should Certificates be Linked to Businesses?	95
6.6.5	Period of Certification Validity	96
6.6.6	Administration of the Certification System	96
6.6.7	Brothel Inspections	96
6.6.8	Amendment to the PRA	97
6.7	Recommendations	97
7	The Use of Under Age People in Prostitution	99
7.1	Introduction	99
7.2	The Threshold for Providing Commercial Sexual Services	99
7.3	International Legislation	100
7.4	The Nature of Under Age Prostitution	101
7.4.1	The Number of Under Age People Used in Prostitution in New Zealand	101
7.5	Street-Based Under Age Prostitution	102
7.6	Reasons for Under Age Involvement in Prostitution	103
7.7	Harm Done	104
7.8	Prosecutions and Convictions	105
7.8.1	Difference Between the Crimes Act Offence and the PRA Offences	105
7.8.2	Charges Under Sections 20 - 22 of the PRA	105
7.9	Sentences Under Sections 20 - 23 of the PRA	107
7.10	Role of Police	109
7.11	Social Support for Young People Involved in Under Age Prostitution	111
7.11.1	Non-Governmental Social Support	111
7.11.2	Government Programmes	111
7.12	Options	112
7.12.1	Amending the PRA	112
7.12.2	Amending the Children, Young Persons and Their Families Act 1989	113
7.12.3	Changes to the Independent Youth Benefit	113
7.12.4	Social Support and a Multi-Agency Approach	114
8	Street-Based Sex Workers	117
8.1	Introduction	117
8.1.2	Historical Perspective	117
8.2	The Nature of Street-Based Sex Work	118
8.2.1	Numbers	118
8.3	Reasons for Working on the Streets	119
8.3.1	A Matter of Choice or Circumstance	119
8.3.2	Demographic Factors	120
8.4	Impact of the PRA on Street-Based Sex Workers	121
8.4.1	Role of Police	121
8.5	Is There a Problem?	122
8.5.1	The 'Problem' of Street Work for Sex Workers	122
8.5.2	Christchurch Murders	122
8.5.3	Drugs and Alcohol	123
8.5.4	Access to Health Services	123
8.5.5	Social Marginalisation	123
8.6	Objections to Street-Based Sex Work	124
8.6.1	Social Nuisance	124
8.6.2	Means Available to Deal with Social Nuisance	125
8.7	Options	125
8.7.1	Local Government Initiatives	125
8.8	International Experience	126

8.8.1	British Approaches: Targeting Kerb-Crawlers and Anti-Social Behaviour Orders	127
8.8.2	The Swedish Model: Prohibition of Purchase	127
8.8.3	Safe-House Brothels in Sydney	128
8.8.4	Dutch Tolerance Zones	129
8.9	Support Strategies	129
8.10	Why Legislation is Not the Answer	130
8.11	PLRC Position on Street-Based Sex Work	131
8.11.1	Street Workers Should be Supported to Work Safely and with Consideration for Local Communities	131
8.11.2	Street Workers Should be Encouraged to Stop Working on the Streets	132
8.11.3	Legislative Approaches to Problems Associated with Street-Based Sex Work Should be Avoided	132
8.11.4	Local Government Should Adopt Practical Solutions	132
9	Response of Territorial Authorities to the PRA	135
9.1	Introduction	135
9.2	Local Government	135
9.2.1	Introduction to Local Government in New Zealand	135
9.3	Role of Territorial Authorities under the PRA	136
9.4	Results of Questionnaire	137
9.5	Other Mechanisms Available to Territorial Authorities	139
9.5.1	The Local Government Act 2002	139
9.5.2	'Soliciting and Touting'	140
9.5.3	The Carterton and Queenstown Bylaws	140
9.5.4	The Resource Management Act 1991	140
9.5.5	The Health Act 1956	141
9.5.6	Non-PRA Bylaws, Other Statutes and Non-Legislative Responses	141
9.6	Local Government's Approach to Small Owner-Operated Brothels	142
9.7	Legal Challenges to Bylaws Regulating the Sex Industry	143
9.8	Should the PRA's Bylaw Making Power be Amended?	146
9.9	The Manukau City Council's Concerns About Street-Based Sex Work	146
10	Employment Conditions	151
10.1	Introduction	151
10.2	The Sex Industry Prior to 2003	151
10.3	Employment Rights After Decriminalisation	152
10.3.1	The Status of the Sex Industry	152
10.3.2	Fines, Bonds and Fees	153
10.4	Employment Status of Sex Workers	155
10.5	Employment Contracts in the Sex Industry	157
10.6	The Formalisation of Employment Relationships	158
10.7	Next Steps	159
11	Common Misconceptions About Prostitution	163
11.1	Coercion	163
11.2	Links with Crime and Gangs	163
11.3	Drug Use	164
11.4	Media Influence on Public Perception	164
12	Invisibility of Clients	165
12.1	Who Buys Sex?	165
12.2	Why Men Buy Sex	165
12.3	Criminalising Clients	166
13	Trafficking	167

14 Conclusion and Future Review	168
References	169
Appendix 1	174
Prostitution Law Review Committee Members	174
Appendix 2	177
Glossary of Terms and Abbreviations	177

List of Tables

Table 1	Numbers of Sex Workers by Police District and Sector of Sex Industry, Prostitution Law Review Committee, 2005	31
Table 2	Estimation of Numbers of Sex Workers in Five Areas of New Zealand in February/March 2006	33
Table 3	Re-estimation of Numbers of Sex Workers in Five Areas of New Zealand in June - October 2007	34
Table 4	Estimations of Sex Workers in Christchurch in May 1999 and February 2006	35
Table 5	Wellington Commercial Sexual Services Advertisements 2003 - 2007 by Source	36
Table 6	Wellington Commercial Sexual Services Advertisements 2003 - 2007 by Type	37
Table 7	Auckland Commercial Sexual Services Advertisements 2003 - 2007 by Source	37
Table 8	Auckland Commercial Sexual Services Advertisements 2003 - 2007 by Type	38
Table 9	Sex Workers' Perceptions of Rights Under the Act by Sector	44
Table 10	Ability to Refuse Clients in Last 12 Months by Sector	46
Table 11	Adverse Experiences while Working in the Last 12 Months by Sector	56
Table 12	Reasons for Entry into Sex Work in Each Sector	63
Table 13	Expected Length of Stay in the Sex Industry by Years of Working in the Industry	65
Table 14	Breaks from Sex Work in Each Sector	66
Table 15	Reasons for Staying in the Sex Industry in Each Sector	68
Table 16	Perceived Benefits of Sex Work by Sector	72
Table 17	Pathways to Exiting (Sanders, 2007)	75
Table 18	Sector of Original Employment by Sector of Current Employment in the Sex Industry	76
Table 19	Summary of Best Practice Principles for Exiting Interventions	78
Table 20	Numbers of Charges Brought Under Sections 20 - 22 of the PRA, by Outcome and Offence, 27 June 2003 – 31 March 2008	106
Table 21	Number of Disposed Charges Brought Under Sections 20-22 of the PRA by District Court, 27 June 2003 – 31 March 2008	107
Table 22	Sentence Types Imposed for Convicted Charges Laid Under Sections 20 - 22 of the PRA, by Offence, 27 June 2003 to 31 March 2008	108
Table 23	Custodial Sentences Imposed Under Sections 20-22 of the PRA, by Case, 27 June 2003 to 30 November 2007	108

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.

1. Introduction

This chapter provides background to the passage of the Prostitution Reform Act 2003 (PRA), and outlines the PRA's main points. This chapter also provides an overview of the role of the Prostitution Law Review Committee (the Committee) and its statutory review of the PRA. The research projects undertaken for the Committee's review are described and the methodology used in them is explained. The structure of the Committee's report is also set out.

The Committee's role was to assess the operation of the PRA. The Committee did not have a brief to investigate all aspects of the sex industry, or issues associated with it. The Committee was required under section 42 PRA to:

- assess the impact of the PRA on the number of sex workers in New Zealand;
- assess the nature and adequacy of the means available to assist people to avoid or cease working as sex workers;
- consider whether any amendments to the PRA or any other law are necessary or desirable;
- consider whether the system of certification is effective or could be improved, whether any other agency should administer it, and whether a system is needed for identifying the location of businesses of prostitution;
- consider whether any other amendments to the law are necessary; and
- consider whether any further review or assessment of the matters set out above is necessary.

1.1 Legal Situation Prior to the PRA

Prostitution has a long history in New Zealand, as elsewhere, with the sex worker traditionally the one whose actions have been criminalised.

Under the Crimes Act 1961, brothel-keeping (section 147), living on the earnings of prostitution (section 148), and procuring sexual intercourse (section 149) were offences, each attracting a maximum penalty of up to five years imprisonment. Soliciting was prohibited under section 26 of the Summary Offences Act 1981, and incurred a fine of up to \$200. However, the actual provision of sexual services for payment was not an offence.

The Massage Parlours Act 1978 introduced a regime for licensing massage parlours, which in effect provided fronts for prostitution, while at the same time attempted to maintain the illusion of legal sanctions based on a moral repugnance of commercial sexual behaviour. The Massage Parlours Act barely mentioned prostitution other than to prohibit anyone with convictions for prostitution-related offences either working in, or obtaining a licence to operate, a massage parlour.

The covert nature of arrangements in massage parlours often meant workers in the parlours were vulnerable to exploitation. Sex workers also still faced the possibility of arrest for soliciting. Unscrupulous parlour operators could threaten their employees with exposure if they tried to negotiate better pay or working conditions.

New Zealand's position was typical of that taken in most comparable jurisdictions at the time (Australia, Canada and the United Kingdom) in that it sought to regulate the industry, but did so by penalising the worker. This situation worked to the detriment of the workers' health and

well-being. It resulted in a double standard of morality that increasingly came under criticism and led to calls for reform.

1.2 The Prostitution Reform Act 2003 (PRA)

1.2.1 Passage of the PRA

In the mid-1990s, the New Zealand Prostitutes' Collective (NZPC), some major women's organisations, legal volunteers, and members of NGOs and various political parties, who were strong advocates for reform, drafted a bill to reform New Zealand's prostitution laws by decriminalising the criminal offences of brothel-keeping and soliciting. In 1999, the bill was taken up by Labour MP Tim Barnett. The Prostitution Reform Bill (the Bill) also aimed to 'safeguard the human rights of sex workers and protect them from exploitation, to promote the welfare and occupational health and safety of sex workers and create an environment which is conducive to public health, and to protect children from exploitation in relation to prostitution' (Prostitution Reform Bill, 2000).

The Bill was drawn from the ballot of Private Members Bills in 2000, and had its first reading in Parliament in October that year. The Bill took two and a half years to pass through the Select Committee phase. There were 221 submissions to the Justice and Electoral Committee (the Select Committee) on the Bill, representing a wide range of opinions. Overall, approximately 41% of submissions generally supported the Bill and approximately 56% were generally opposed; 3% were neutral.

The Bill was hotly debated at each stage of its progress through Parliament, but it was eventually passed into law, 60 votes to 59, with one abstention. MPs voted as a matter of personal conscience rather than along party lines. The PRA came in to force on 28 June 2003.

Significant changes were made to the Bill during the Parliamentary process. Notably, a system of certification for brothel operators was included along with provisions prohibiting people in New Zealand on limited entry visas working or investing in businesses of prostitution. Also included at the Bill's final stage was part four of the Bill which created the Prostitution Law Review Committee (the Committee) and the statutory review of the PRA.

1.3 Purpose and Main Features of the PRA

The purpose of the PRA (section 3) is to decriminalise prostitution and to create a framework that:

- safeguards the human rights of sex workers and protects them from exploitation;
- promotes the welfare, occupational health, and safety of sex workers;
- is conducive to public health; and
- prohibits the use in prostitution of persons under 18.

1.3.1 Prohibitions on Use in Prostitution of Persons Under 18 Years

Sections 20 - 22 prohibit the use of persons under the age of 18 in prostitution. It is an offence to arrange for or to receive commercial sexual services from a person under 18. It is also an offence to receive payment for the commercial sexual services of a person under 18 years of age. Under section 23, no one under the age of 18 years can be charged as a party to offences under

sections 20 - 22. The PRA increased the penalty from a maximum of five years imprisonment (section 149A of the Crimes Act) to a maximum of seven years for being a client of a person under 18.

It is not an offence for a person under the age of 18 to provide commercial sexual services. Rather, they are considered to be a victim of the offences described above. As of March 2008, 92 charges had been laid in relation to the use of under age people in prostitution. Thirty-four of these charges have resulted in a conviction; with a further 17 still to be decided. The use of under age people in prostitution is discussed in chapter seven.

1.3.2 Health and Safety Requirements

Section 8 of the PRA requires operators of businesses of prostitution to adopt and promote safer sex practices. It is an offence to contravene this section; anyone who does so is liable upon summary conviction to a fine not exceeding \$10,000.

Section 9 requires sex workers and clients to adopt safer sex practices. Failure to do so may result, upon summary conviction, in a fine not exceeding \$2,000. As of January 2008, one person (a client) has been convicted under section 9; they received a fine of \$400.

Sections 24 - 29 create powers of entry for the purpose of inspection for compliance with health and safety requirements. For the purposes of the PRA, Medical Officers of Health are deemed inspectors and may enter any premise they have reasonable grounds to believe is a business of prostitution, but must either have consent of the occupier or a search warrant to enter a home (the location for most SOOBs). Occupational health and safety of sex workers is discussed in chapter four.

1.3.3 Small Owner-Operated Brothels

Small owner-operated brothels (SOOBs) are defined under the PRA as brothels in which no more than four sex workers work and where each individual sex worker retains control over his or her earnings. SOOBs are deemed not to have operators and therefore a brothel operator's certificate is not required.

1.3.4 Brothel Operator Certification System

Part 3 establishes a certification system for brothel operators. Every operator of a business of prostitution must hold a valid operator's certificate. To be eligible for an operator's 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. Every person who operates a business of prostitution without a valid certificate is liable on summary conviction to a fine not exceeding \$10,000. The brothel operators' certification system is discussed in chapter six.

1.3.5 Territorial Authorities May Make Bylaws

Sections 12 - 14 allow territorial authorities to make bylaws regulating the location of brothels and the signage and advertising associated with commercial sexual services. Three bylaws have been challenged in court, two of which were overturned on the basis that they prohibited brothels operating within the city, rather than merely regulating the location of brothels. The response of territorial authorities to the PRA is discussed in chapter nine.

1.4 Review of the PRA

The Prostitution Law Review Committee was established under Part 4 of the PRA to review the operation of the PRA. The Committee has drawn on the purpose of the PRA in structuring its review and in writing this report. The Committee has also kept in mind the first part of the PRA's purpose which states that the PRA is not intended to endorse or morally sanction prostitution or its use. The Committee has endeavoured to take as pragmatic a view as possible, while still remaining cognisant of the concern prostitution and the sex industry engenders in some sectors of the community.

1.4.1 The Committee Process

The Committee consists of eleven members appointed by the Minister of Justice. A list of the Committee members is in Appendix 1.

The Committee first met in March 2004 and has continued to meet as and when required. The Committee met monthly during the later phase of writing this report. The Committee usually met in Wellington but travelled to Auckland and Christchurch to hear from representatives of territorial authorities, NGOs, Police, and the sex industry. The Committee was also able to view brothels in each of the centres visited and speak to operators and sex workers. The Committee also visited areas of street-based sex work in these cities.

The Committee invited interested NGOs and other organisations that had made submissions on the Prostitution Reform Bill to provide information for this review. In 2007, the Committee also placed public notices in the major daily newspapers calling for information from interested parties.

1.4.2 Statutory Purpose

The Committee was charged with assessing the number of sex workers in New Zealand at the time of decriminalisation. This formed the basis of the Committee's first report, *The Nature and Extent of the Sex Industry in New Zealand: An Estimation*, which was released in 2005.

The Committee's second task was to review the operation of the PRA three to five years after its enactment, focusing on whether the PRA is achieving its purpose. The review was also to include an assessment of the operation of the PRA since its commencement, the impact of the PRA on the number of persons working as sex workers in New Zealand, and the nature and adequacy of the means available to assist persons to avoid or cease working as sex workers. The Committee was also tasked with considering whether the system of certification is working adequately, whether any amendments to the PRA or any other law was necessary, and whether further review was required.

1.4.3 Additional Matters Considered

In the course of gathering information for the current review, the Committee identified additional matters that affect the operation of the PRA and the sex industry in New Zealand, but which the PRA is silent on. Street-based prostitution is a sector of the sex industry that is very visible and in which many of the harms associated with prostitution arise and may be magnified. Street-based prostitution is discussed in chapter eight. Another area of concern the Committee is not specifically tasked to consider is trafficking in persons, this is discussed in chapter 13.

1.5 Report Based on Research

In July 2005, the Committee commissioned Victoria University's Crime and Justice Research Centre (CJRC) to complete an evaluation framework to ensure the Committee met its statutory requirements. The framework recommended a mixed method approach to incorporate perspectives from multiple informants and stakeholders. The framework identified five evaluation projects which needed to be completed for the review. The majority of the research identified in the framework has been carried out by the Christchurch School of Medicine (CSOM), Crime and Justice Research Centre (CJRC), and the Ministry of Justice. NZPC also carried out audits of advertisements for sexual services for both the CSOM and the Ministry of Justice. Research for the Committee's review started in 2006 and was concluded in late 2007.

Where research data is provided in percentage form, the Committee has attempted to supply numerical equivalents. These should be treated as approximations.

1.5.1 University of Otago's Christchurch School of Medicine

The CSOM received funding from the Health Research Council of New Zealand and the Ministry of Justice to undertake an assessment of the impact of the PRA on the health and safety of sex workers. The CSOM's findings are reported in *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers*, which is available on the Ministry of Justice website: www.justice.govt.nz.

CSOM researchers Gillian Abel, Dr Lisa Fitzgerald, and Cheryl Brunton undertook a multi-methods research project in five locations in New Zealand. Three major cities were included (Auckland, Christchurch, Wellington) along with a smaller regional centre (Nelson) and a rural district (Hawke's Bay including the cities of Napier and Hastings). The study used a community-based participatory approach, with the CSOM researchers working in partnership with NZPC.

The first phase of the study involved exploratory focus groups with sex workers and regulatory officers (staff from Occupational Health and Safety, territorial authorities and Medical Officers of Health). The data collected in phase one was used to inform phases three and four of the study.

The second phase of the study was an estimation of the number of sex workers in the study locations. Methodology and results from this phase are discussed in chapter two.

The third phase of the study was a survey of 772 sex workers in the five locations. Participants were not randomly selected as it was considered this may cause distrust and affect the response rate and compromise the validity of the sample. Steps were taken to represent the overall demographic make-up of the population of sex workers within the sample. Participants were from both large cities and smaller towns. There were participants from the street, private, and managed sectors. Different gender identifications (male, female and transgender) were also represented¹. Participants whose English was not sufficient to understand the questions without the aid of an interpreter were excluded. However, few people were excluded on this basis.

A questionnaire was designed by the CSOM in conjunction with the NZPC and the Ministry of Justice. Many of the questions were the same as those used in the CSOM study of the health and safety practices of sex workers in Christchurch in 1999. Comparisons between the 1999 and 2006 Christchurch results were possible, but not for the rest of the country. The questionnaire

¹ The term 'transgender' was used by the researchers to describe a diverse range of transgender women including whākawahine and fa'afafine. The research did not identify male sex workers who identified as transgender men.

asked sex workers about themselves (demographic information), their entry into sex work (including age at time of starting sex work and sector of the industry), and their experiences while working (nature of their work, violence or other bad experiences with clients). The questionnaire also asked about sex workers' health including their use of health services, drug use, and their sexual health practices.

The fourth phase of the study included in-depth, qualitative interviews with 58 sex workers in the study locations. Potential participants were either contacted via telephone calls or when outreach workers accessed them in NZPC offices, brothels, escort agencies, streets or private homes. Potential participants who were not connected to NZPC were also recruited to try to reflect the diversity of the industry within the sample. Attention was given to gaining participation of male, transgender, street, brothel, escort and private workers as well as small town and big city workers. Direct quotes from these interviews have been used throughout this report. Names and other identifying details have been changed to protect the participants' identity.

A semi-structured interview guide was developed following analysis of focus group discussions undertaken as the first phase of the study. Participants were provided with information sheets and written or oral consent was taken to participate in the study. Each participant was reimbursed with \$30 cash in appreciation of their time. The interviews were conducted by NZPC staff (trained by CSOM researchers) and lasted between 30 and 120 minutes, with the average interview taking one hour to complete.

Qualitative interviews were also undertaken with six Medical Officers of Health (Inspectors under the PRA), two sexual health promoters, and an occupational health nurse employed by the Department of Labour. An analysis of the content of eleven submissions by Medical Officers of Health on proposed territorial authority bylaws and district plan changes was also carried out.

1.5.2 Victoria University's Crime and Justice Research Centre

The Ministry of Justice contracted the CJRC to carry out key informant interviews with NGOs, brothel operators, and community groups. The results are in the CJRC's *Key Informant Interviews: Review of the Prostitution Reform Act 2003*, which is available on the Ministry of Justice website: www.justice.govt.nz.

Researchers Dr Elaine Mossman and Pat Mayhew undertook a total of 73 interviews involving 86 individuals. Interviews were conducted in Auckland, Christchurch, Wellington, Nelson, and Hawke's Bay. There were 48 interviews with NGOs and 38 with brothel operators. Of the operators, 13 were SOOBs. The researchers consider good coverage was achieved and the participants reasonably reflected the range of those involved with the sex industry in New Zealand.

Interviews focused on the effectiveness of the PRA in terms of achieving its purpose, whether the brothel operator certification system was working, and the response of territorial authorities to the law reform. Participants were also asked about their level of support for the PRA before and after its enactment. Information from the key informant interviews has been used throughout the Committee's report.

The Ministry of Justice also contracted the CJRC to undertake a literature review of overseas models of prostitution law reform. Dr Mossman and Ms Mayhew compiled three reports, they are:

- *Exiting Prostitution: Models of Best Practice*,
- *International Approaches to Decriminalising or Legalising Prostitution*, and

- *Central Government Aims and Local Government Responses: The Prostitution Reform Act 2003.*

These reports are available on the Ministry of Justice website, www.justice.govt.nz. Information from the CJRC reports is used throughout the Committee's report.

1.5.3 Other Research Used

The Committee has also drawn on research projects that were not specifically commissioned for its review. Research from both New Zealand and overseas has been used. Sources of information have included reports by NGOs, the findings of overseas government bodies tasked with considering options to manage prostitution, and postgraduate dissertations. The Committee has been cautious regarding the origin of each information source and recognises that not all reports are robustly researched or without bias.

1.5.4 Ministry of Justice

The Ministry of Justice co-ordinated the research projects for the Committee and gathered additional information from central government agencies, special interest groups and the general public. Central government agencies were asked about actions taken as a result of the PRA. Of particular interest were any policies or programmes put in place to assist people (particularly young people) to avoid working in or exit the sex industry. Agencies were also asked what impact if any the legislation has had on their core business. The information received from central government, the public, and interested bodies has been used throughout this report.

The Ministry was also assisted by Local Government New Zealand (LGNZ) to send a questionnaire to the 73 territorial authorities asking about the impact of the PRA. Territorial authorities were asked whether they had passed any bylaws, or made changes to their district plans, as a result of the legislation. The responses to the questionnaire are described in chapter nine.

2. Estimation of the Numbers of Sex Workers in New Zealand

2.1 Introduction

Concern has been expressed that decriminalising prostitution would lead to an explosion in the numbers of sex workers in New Zealand. In its commentary on the Prostitution Reform Bill, the Select Committee noted, 'It would appear logical that the removal of criminal sanctions around prostitution means that some people who would not otherwise become involved in prostitution will do so' (Justice and Electoral Committee, 2002). Therefore, the Select Committee recommended the Prostitution Law Review Committee assess the numbers of people working in the sex industry in New Zealand at the time of the passage of the PRA. The Committee was also required to assess the impact of the PRA on the numbers of sex workers three to five years after the commencement of the PRA. This chapter fulfils that requirement.

The reason for the law reform was to neither decrease, nor increase, the number of people involved in the sex industry; but to provide sex workers the same protections enjoyed by other workers in New Zealand. Assessing any change in the numbers of people in the sex industry is intended to serve as only one indication of the operation of the PRA. There are other measures of the operation of the PRA this report covers that are directly linked to the purpose of the legislation.

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 that it is possible, the baseline data is compared with more recent estimates carried out for this report. Assertions about increased numbers of sex workers are also examined.

The Committee concludes, based on the research undertaken for this review, that the number of sex workers in New Zealand has not increased as a result of the passage of the PRA.

2.1.1 Caution Regarding Estimates

The Committee is confident that the research carried out for this report provides the most accurate estimate possible of the numbers of sex workers in New Zealand. However, caution must be applied to any estimate of the numbers of people involved in the sex industry. In relation to early (pre-decriminalisation) attempts to establish the numbers of sex workers, it has been noted that, 'trying to estimate the number of sex workers operating in New Zealand is as about as difficult as counting glow worms in a cave' (Jordan, 2005). Decriminalisation has removed the necessity for sex workers to conceal their occupation to avoid prosecution. However, the sex industry remains discreet and to a large extent difficult to study. Much of the workforce is self-employed and may only be involved in the industry sporadically or for a short time. The Committee wishes to emphasise the difficulty of accurately assessing the number of people involved in the sex industry, even in the current decriminalised environment.

The Committee's first report noted, 'caution must be used when interpreting the findings in this report. They cannot be taken to be an accurate assessment of the size of the sex industry in New Zealand. However, they are useful in providing an indication of the approximate numbers of those working in the sex industry in New Zealand' (PLRC, 2005). The limitations of the methodologies used to estimate numbers of sex workers, and the altered nature of the industry post law reform, should be kept in mind when comparing the current findings with those in the Committee's first report. 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).

2.2 Baseline Data From the Committee's First Report

2.2.1 Survey of New Zealand Police

The Committee's first report estimated the number of people involved in the sex industry before the PRA (PLRC, 2005). Information for the estimate was gathered via a survey of Police officers with knowledge about the sex industry in each of the twelve Police Districts. Police drew on information from the registers of sex workers compiled under the Massage Parlours Act 1978, and from contacts with newspapers and advertisers. The survey was undertaken between October 2003 and February 2004, but informants were asked to provide a picture of the sex industry as close to June 2003 as possible.

It was estimated there were a total of 5,932 sex workers in New Zealand. A cautious approach should be taken to these findings given the retrospective nature of the survey and the variable level and quality of Police information on the sex industry. For instance, Police from the Counties-Manukau District were unable to provide estimated numbers of sex workers, therefore figures for this district were extrapolated from figures based on New Zealand population statistics.

In addition, the Police registers did not provide a totally accurate picture of the sex industry in each district. Names were not removed from the register when a person stopped working. Because the registers were cumulative, they provided an inflated view of the size of the industry. Police who took part in the survey noted the fluid nature of the industry and the substantial crossover between sectors. However, due to the limitations of the data available, it was not possible to avoid double counting people who worked in more than one sector of the industry (for example street and ship, or massage parlours and escort agencies).

Table 1 Numbers of Sex Workers by Police District and Sector of Sex Industry, Prostitution Law Review Committee, 2005

Sector of Sex Industry							
Police District	Street	Massage Parlour	Escort	Rap/Escort parlour	Private	Ship	Total
Northland	0	14	14	0	5	0	33
North Shore	0	68	0	28	2	0	98
Auckland City	360	1880	400	400	350	0	3390
Counties Manukau	150	100	18	-	155	0	423
Waikato	0	0	1	60	40	0	101
Bay of Plenty	2	60	16	3	53	10	144
Eastern	0	45	36	4	15	8	108
Central	0	102	32	13	145	0	292
Wellington	50	119	1	6	224	0	400
Tasman	0	0	25	5	12	5	47
Canterbury	75	211	50	50	132	10	528
Southern	0	30	15	28	295	0	368
Total	637	2629	608	597	1428	33	5932

Police estimated that there were 383 sex businesses across the country at the time of decriminalisation: 189 massage parlours, 101 escort agencies, and 93 rap/escort parlours. It was estimated that there were around 200 sex workers under the age of 18 and over half (60%) of this group were located in the street sector.

2.2.2 First Advertisement Audit

The Committee's first report also included an audit of advertisements for commercial sexual services carried out by the New Zealand Prostitutes' Collective (NZPC). Advertisements appearing in newspapers, the Yellow Pages, and on websites were counted on four randomly chosen Fridays between July 2003 and May 2004.

The newspapers chosen were the New Zealand Herald (Auckland), Truth (Auckland), and The Dominion Post (Wellington). Chinese language newspapers (the Mandarin Times, New Times and Chinese Herald) were also searched on the day chosen in May 2004.

There are limitations with using advertisements to estimate the number of sex workers operating. An advertisement may refer to an individual worker or a business where several workers are employed. Payment is usually required for newspaper advertisements, therefore only the services of sex workers who are currently working are likely to appear. However, advertisements on websites tend to be free to the advertiser. Unless the advertiser advises the webmaster to remove the advert because they are no longer working, the advertisement may remain on the website indefinitely, leading to artificially inflated figures.

In the counting process, precedence was generally given to regular paid advertisements in newspapers, then the Yellow Pages, then websites. Because of the order in which advertisements were taken, some publications, such as Yellow Pages, appear to have very few advertisements, despite having a moderate number of actual advertisements printed or published. This is because only the advertisements that have not already been recorded are listed under that publication. For example, if a person is advertising in *The Truth*, *The Herald*, *The Northern Courier*, the Yellow Pages and sexinnz.co.nz, only one advertisement will have been recorded under their entry in *The Truth*. The numbers given for each publication are therefore the number of advertisements for commercial sexual services not appearing in any other publication. Where possible, advertisements from the same person (using a different name and/or phone number) appearing in the same publication were identified and not double counted.

The May 2004 audit counted 531 advertisements in Auckland, compared to 469 in July 2003, representing an increase of 13%. As noted above, Chinese language newspapers were only included in the May 2004 count. In addition, a new website started operating in early 2004 and was also included in the May 2004 count. If these two additional sources are discounted, the final figure for the Auckland region is an increase of 21 advertisements (4%).

In Wellington, the number of advertisements remained stable at 151 over the period. However, if the Chinese language newspapers and the new website are discounted, the final figure is 145, a decrease of 4%.

2.3 Recent Estimates of the Numbers of Sex Workers in New Zealand

As part of its report on the impact of the PRA on the health and safety practices of sex workers, the CSOM undertook two estimations of the numbers of sex workers in New Zealand. In addition, further audits of advertisements for sexual services were carried out by NZPC in 2006 and again in 2007.

Since decriminalisation, Police no longer maintain registers of sex workers, and resources previously used to monitoring the sex industry have been reallocated. Therefore, the methodology used to estimate the number of sex workers in the Committee's first report cannot be repeated. In addition, decriminalisation has altered the nature of the sex industry. The Committee's first report included numbers of workers in six different sectors of the industry: massage parlours, private workers, street workers, escort agencies, rap/escort parlours and ship workers. Since decriminalisation, these distinctions are no longer relevant as massage parlours, rap and escort parlours operate as brothels. Therefore, the CSOM study divided the sectors of the sex industry between street-based, managed, and private indoor workers. The term 'managed worker' refers to the previous categories of massage parlour, escort and rap/escort parlour workers.

2.3.1 Estimation of Numbers of Sex Workers

The first estimation of numbers of sex workers carried out by the CSOM took place over a two week period in February and March of 2006. The regions covered were Christchurch (Christchurch City, including outlying suburbs, but not the wider Canterbury area), Wellington (including Porirua and Hutt Valley), Auckland (Orewa in the north to Papakura in the south), Nelson (Nelson City, excluding the wider Nelson Bays area), and Hawke's Bay (including the

cities of Napier and Hastings).² Different enumeration strategies were adopted for different sectors of the industry: managed (brothel), private indoor workers, and street-based.

Information on numbers of workers in brothels was collected by NZPC outreach workers during their regular visits to distribute safe sex supplies and educational information. Businesses not in contact with NZPC were also asked to provide information on the number of workers they employed; however the accuracy of these estimates cannot be confirmed.

NZPC estimated numbers of private workers via analysis of advertisements in the 'Escort' or 'Adult Information' columns of the local daily and community newspapers and on the Internet for a two week period in February. The same methods were used as for the advertising audits done in 2003-4. Again, phone numbers and names were compared to identify people advertising under different names or using multiple phone numbers. When phone calls were made to check the validity of advertisements, workers were also asked if they were private indoor workers or street-based to avoid double counting.

Estimates of numbers of street-based workers were provided by outreach workers from NZPC (and Youth and Cultural Development (YCD) in Christchurch) through head counts in the field, both before and after midnight on several busy nights over the two-week period. The outreach workers know most of the street-based sex workers personally, therefore the chance of double counting was reduced. When outreach workers were aware of street-based workers who also advertised on the web, their details were removed from the list of private indoor workers.

Christchurch and Wellington outreach workers included street-based workers in the final count who they knew were working, but who were not present when head counts were undertaken. Auckland outreach workers did not do this and therefore, the recorded numbers of street-based workers in this city is likely to be an underestimation.

Table 2 Estimation of Numbers of Sex Workers in Five Areas of New Zealand in February/March 2006

	Private Indoor Workers	Street workers	Managed Workers	Total workers
Auckland	551	106*	856	1513
Christchurch	90	100	202	392
Wellington	140	47	190	377
Hawke's Bay	42	0	32	74
Nelson	27	0	13	40
Total	850	253	1293	2396

* *Estimation of Auckland street-based workers is likely to be an underestimation*

The number of sex workers in Auckland in 2006 (1,513) was less than half that estimated at the time of decriminalisation (3,390). Wellington (377 vs. 400) and Christchurch (392 vs. 528³) also had fewer numbers than were reported in the Committee's first report. The CSOM study

² Note, these areas do not correspond to the Police Districts used in the Committee's first report.

³ The PLRC estimate was for the larger Canterbury area, including South Canterbury, which was excluded from the CSOM study's estimation.

concluded ‘estimations within the different locations of the research would suggest that previous figures were an overestimation.’

The majority of sex workers in the areas canvassed work in the managed sector (1,293). In Auckland, 57% of sex workers worked in the managed sector, Christchurch 51% and Wellington 50%. The private sector was smaller in Christchurch (23%) than in either Auckland (36%) or Wellington (37%). In the smaller towns, the majority of sex workers worked privately and there were no street-based workers.

The CSOM also found that 11% of the sex workers worked on the street. As a proportion of sex workers, street-based work represented 7% of the industry in Auckland, while in Wellington it represented 13% and in Christchurch 26%.

2.3.2 2007 Re-estimation

A second estimate of the size of the sex industry in the five locations was carried out in 2007. For most centres, the same techniques as those used in 2006 were again employed. However, as noted above, in 2006 Auckland outreach workers did not include street-based workers known to be working but not seen on the nights counts were done. In 2007, the count in Auckland was conducted in the same manner as the Wellington and Christchurch counts in 2006 (and again in 2007).

Table 3 Re-estimation of Numbers of Sex Workers in Five Areas of New Zealand in June - October 2007

	Private Indoor Workers	Street Workers	Managed Workers	Total Workers
Auckland	476	230	745	1451
Christchurch	89	121	192	402
Wellington	121	44	224	389
Hawke’s Bay	28	0	37	65
Nelson	17	0	8	25
Total	731	395	1206	2332

2.3.3 Auckland Results

The increase in numbers of street-based workers in Auckland in 2007 can be partially explained by the different methodologies used to estimate numbers of street-based workers in 2006 and 2007. However, the CSOM study also notes that the Auckland outreach workers had seen an increase in the number of sex workers on the street in the six to eight months prior to June 2007. The Auckland NGO ‘Streetreach’ report an increase in street-based sex workers in Auckland between August and November 2007 (Streetreach, 2007).

It is unlikely the increased numbers in the Auckland street-based sector in 2007 can be explained by the simultaneous decrease in numbers of people working in both the managed (from 856 to 745), and private sectors (from 551 to 476). Information from the qualitative interviews undertaken by the CSOM indicates there is little movement from the street sector to other

sectors of the industry.⁴ Of current street-based workers 78.8% reported starting sex work in the street sector. Few street-based workers started in the managed sector (18.4%) and even fewer started working privately (2.8%) (CSOM, 2007). The overall numbers of sex workers in Auckland decreased over this period, despite the suggested increase in the street-based sector.

2.3.4 Comparison with 1999 Christchurch Study

The CSOM study compared the 2006 findings from Christchurch with an identical study done in Christchurch in 1999 (Plumridge and Abel, 2000). Accurate comparisons were only possible for Christchurch, as the other centres were not included in the 1999 study.

The CSOM found total numbers increased slightly from 375 in 1999, to 392 workers in 2006. The number of street-based sex workers decreased from 106 in 1999, to 100 in 2006. 'Prior to decriminalisation, Christchurch had a higher proportion of street-based workers than other centres in New Zealand. This remains unchanged following decriminalisation. As a proportion of the sex industry in Christchurch in 1999, street-based workers comprised 28% compared to 26% in 2006' (CSOM, 2007).

There appears to be a trend of Christchurch workers moving from the managed sector to the private sector. In 1999, the managed sector comprised 62% of the sex worker population in Christchurch and the private sector 10%. The comparable figures in 2006 were 51% and 23% respectively.

Table 4 Estimations of Sex Workers in Christchurch in May 1999 and February 2006

	Private Indoor Workers	Street Workers	Managed Workers	Total Workers
Christchurch May 1999	36	106	233	375
Christchurch February 2006	90	100	202	392

2.4 Further Advertisement Audits

The advertising audits carried out by the NZPC in 2003 - 04 (for the Committee's first report) were repeated in Wellington and Auckland in July 2006 and again in July 2007. As far as possible, the same methods were used for each audit.

The figures for 2003 (below) are slightly different from those published in the Committee's first report. It was necessary to revise the 2003 figures because a small number of 0900 numbers advertising phone sex only were inadvertently included in the count of Auckland advertisements. In addition, several businesses that had advertised under different names were identified as having been double counted. A few other counting errors were found when the figures were re-examined.

In 2007, scrutiny of the sources, particularly websites, identified a high proportion of invalid advertisements where the phone had been disconnected or relocated, or the person being

⁴ 49.3% of current private indoor workers reported starting work in the managed sector, as opposed to only 11.5% who started in the street sector. Only 3.9% of current managed workers reported starting work in the street sector.

advertised had never worked, or no longer worked in the sex industry. Both the total number of advertisements and the number of valid advertisements are included, demonstrating how simply scanning the newspapers or web for adult entertainment advertisements can present a very misleading picture of the size of the sex industry.

Table 5 Wellington Commercial Sexual Services Advertisements 2003 - 2007 by Source

WELLINGTON: By Source	2003	2006	2007 Total	2007 Valid
Dominion Post	64	55	61	61
Yellow Pages	1	5	0	0
Home Voice	0	0	0	0
Community newspapers	0	0	0	0
express	0	0	0	0
newzealandgirls.co.nz	-	17	7	7
pinkmoon.co.nz	-	-	0	0
himorher.com	-	4	3	3
nzR18.co.nz	-	-	9	8
escort-ENZ.com	-	-	2	2
escortnz.co.nz	-	19	-	-
nzblondes.co.nz/brunettes	-	-	0	0
asianbabes.co.nz	-	-	0	0
nzguys.co.nz	-	-	0	0
sexinnz.co.nz	65	40	105	32
pleasure.co.nz	21	-	-	-
sexnow.co.nz	0	-	-	-
Total	151	140	187	113

Table 6 Wellington Commercial Sexual Services Advertisements 2003 - 2007 by Type

WELLINGTON: By type	2003	2006	2007 Total	2007 Valid
Strippers	2	0	0	0
Private	113	120	158	102
Parlour	18	15	14	8
Agency	18	5	15	3
Total	151	140	187	113

Table 7 Auckland Commercial Sexual Services Advertisements 2003 - 2007 by Source

AUCKLAND: By source	2003	2006 Total	2006 Valid	2007 Total	2007 Valid
NZ Herald	22	3	3	98	98
Truth	201	168	168	176	176
Yellow Pages	64	16	16	0	0
Chinese Herald	0	0	0	0	0
Mandarin Times	0	0	0	0	0
New Times	0	0	0	0	0
Community papers	0	0	0	14	12
express	0	0	0	0	0
newzealandgirls.co.nz	-	109	109	35	35
nzR18.co.nz	-	-	-	61	61
pinkmoon.co.nz	-	-	-	8	8
himorher.com	-	30	30	7	7
escortsnz.co.nz	-	9	9	-	-
escort-ENZ.co.nz	-	-	-	14	14
nzadult.co.nz	-	5	5	2	2
nzblondes.co.nz/brunettes	-	-	-	18	18
asianbabes.co.nz	-	-	-	2	2
nzguys.co.nz	-	-	-	8	8
sexinnz.co.nz	142	138	41	289	32
pleasure.co.nz	32	61	61	-	-
sexnow.co.nz	0	-	-	-	-
Total	461	539	442	732	473

Table 8 Auckland Commercial Sexual Services Advertisements 2003 - 2007 by Type

AUCKLAND: By type	2003	2006 Total	2006 Valid	2007 Total	2007 Valid
Strippers	0	3	3	0	0
Private	346	447	389	627	422
Parlour	48	59	32	79	42
Agency	67	30	18	26	9
Total	461	539	442	732	473
Australia	-	-	-	(3)	(3)

Advertisements from strippers were counted only if they provided both stripping and sexual services, but were not part of a brothel. Stripping services that were attached to a brothel were not counted twice. In 2007, all stripping clubs stated they provided stripping services only and did not provide commercial sexual services.

Three Australian-based sex workers were advertising in New Zealand, intending to fly to New Zealand for a booking of a value greater than \$1000. Their advertisements have been noted, but because it is very unlikely they would be hired due to the cost, they have not been included in the totals.

2.5 Advertisements for Vacancies

The Department of Labour monitored advertised job vacancies in the sex industry from 2002 to 2006, and monthly from January 2007 to April 2007. The numbers of advertised vacancies fluctuated (between 12 and 43 vacancies during the period monitored), but the overall trend was for the number of advertised vacancies in the sex industry to remain fairly stable (Department of Labour, 2007). The Department's Job Vacancy Monitoring Programme stopped monitoring vacancies in the sex industry because the decision was made to exclude all commission-only jobs from the programme. Information received by the Department indicated the sex industry pays solely on commission.

Some brothel operators report difficulty attracting staff to work in brothels, making it necessary to continuously advertise for staff (CJRC, 2007). Some brothels have closed down with operators citing the lack of staff and increasing competition for workers because of sole operators/SOObS, as reasons for the failure of their business (NZ Herald, 18 November 2006, and 19 January 2008).

Comment

A proliferation of advertisements, either for the provision of sexual services, or for vacancies in the industry, does not necessarily mean an increase in the number of people involved in the provision of commercial sexual services. Multiple advertisements from sex workers or brothels are common, and may at first glance be interpreted as originating from separate providers. One of the consequences of decriminalisation is a more open industry, with fewer restrictions on advertising (discussed below) which may contribute to an increase in the number of advertisements for sexual services. However, as the research demonstrates, the numbers of people advertising commercial sexual services in Wellington and Auckland have remained stable, or declined since the enactment of the PRA.

2.6 Changes in the Sex Industry Since Decriminalisation

2.6.1 Advertising Practices

Prior to decriminalisation, Police requested that newspapers not accept advertisements for adult entertainment columns unless the advertiser was registered with the Police. Most daily newspapers complied with this system, limiting the possibility for people to freely advertise their services (Jordan, 2005). Since the repeal of the Massage Parlours Act 1978 (PRA, 2003), Police no longer require sex workers to register with them. Newspapers accept adult entertainment advertisements based on editorial policy, which may include prohibiting certain explicit wording. Advertisers may also have to provide proof of age in order to advertise in the adult entertainment section of a newspaper. Policies about proof of age vary across publications; some require an application in person with photo ID, others do not inquire as to the age of the advertiser.⁵

2.6.2 Technology

Developments in communications technology have increased the ease with which commercial sexual services can be advertised. Increasing uptake of mobile phones has meant sex workers can have multiple phones and provide different phone numbers for each publication.

The proliferation of ‘chat lines’ and the use of the Internet have meant people can directly contact each other and negotiate terms without needing a conduit such as a newspaper or brothel operator. In addition, the Internet has allowed people to advertise sexual services on multiple websites, again using any number of names and phone numbers, creating the impression of a greater choice of service providers.

2.6.3 Decriminalisation as a Reason for Entering the Sex Industry

A quarter of respondents to the CSOM quantitative survey said that one of the reasons for entering the sex industry was that it was no longer illegal. However, few sex workers who took part in the qualitative interviews cited decriminalisation as the reason, or a major reason for entering the sex industry. The main reasons for entering the sex industry remained financial.

Workers who had considered the legal status of sex work were not asked whether they would have entered the sex industry if it was still illegal. Therefore, it is not possible to know whether decriminalisation precipitated their entry, or whether they would have started sex work regardless of its legal status.

In its commentary on the Prostitution Reform Bill the Select Committee noted that, regardless of whether the Bill was passed, some people would consider prostitution a legitimate profession and some people would not. Given the relatively static numbers of sex workers pre- and post-PRA, the Committee considers decriminalisation has not become a significant factor in people’s decisions to enter the sex industry.

⁵ For example, The Press and The Dominion Post will not accept advertisements for the adult entertainment section of the classifieds unless the advertiser places the advert in person and provides photo identification. By contrast, The New Zealand Herald does not require any proof of age to place adult entertainment advertisements and will accept advertisements over the telephone or via the internet.

2.6.4 Claims that Numbers Have Increased

The Committee is aware of reports claiming the numbers of sex workers, and in particular street-based sex workers, have increased as a result of decriminalisation. Addressing these claims forms a substantial part of this chapter. Often, the increases have been reported in general terms, based on impressions, rather than citing actual numbers. One exception is the claim that the numbers of street-based sex workers in Auckland increased by 400% as a result of decriminalisation. This claim cannot be substantiated, and was not based on systematic or robust research.

The figure of a 400% increase has been re-reported several times, demonstrating the ease with which opinion can be perceived as 'fact'. In his speech to the House during the second reading of the Manukau City Council (Control of Street Prostitution) Bill, Gordon Copeland MP attributed the report of a 400% increase to the Maori Wardens' submission on the Bill in 2006. The Maori Wardens may have been influenced by an article in the NZ Herald in 2005 in which Mama Tere Strickland was reported to say, 'Numbers have quadrupled since that Bill [Prostitution Reform Act]' (New Zealand Herald, 2005).

A 400% increase in the numbers of sex workers was predicted prior to the passage of the PRA, and was also claimed in relation to the law reform in New South Wales. This may be the original source of the idea that numbers of sex workers will, or have, increased by such a margin as a result of law reform. Officials advising the Select Committee were unable to find any statistical evidence to support the claim. In addition, the Select Committee noted that 'there may appear to be a growth in the industry because it becomes less hidden in nature' (Select Committee, 2002).

In the Committee's first report, the number of street-based sex workers in Auckland was estimated to be 360 (PLRC, 2005). An increase of 400% would mean there would now be 1,440 sex workers on Auckland's streets. The Committee considers that the research undertaken by the CSOM conclusively refutes an increase of this magnitude, with the 2007 figures estimating the number of Auckland street-based sex workers at 230.

2.7 Committee's Conclusion

In the Committee's first report, it was estimated that there were 5,932 sex workers in New Zealand at the time of decriminalisation. The current report estimates the number of sex workers to be 2,332. The Committee does not consider that this means the numbers of sex workers in New Zealand have declined by 3,600 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. Although the recent estimates were drawn from a smaller geographical area than the estimates in the Committee's first report, the main urban areas of Auckland, Wellington and Christchurch are covered in both estimates. The effect of excluding the smaller urban centres and rural district in the current estimates is considered to be minimal.

The Committee notes the information suggesting an increase in the numbers of street-based sex workers in Auckland during 2007. The apparent increase can be partially explained by the different methodologies used to estimate numbers of street-based sex workers in 2006 and 2007. The Committee considers it is too early to say whether the apparent increase is an upward trend, or the result of normal fluctuations in a fluid industry. The Auckland street-based sector has unique characteristics due to its location in New Zealand's largest and fastest growing city. However, not enough is known about how Auckland's street-based prostitution areas operate to

definitively say what might cause numbers of workers to fluctuate. Based on the available research, the Committee is confident the enactment of the PRA is not a major causal factor in the increase in street-based workers in Auckland in 2007.

Arguments that decriminalisation has increased the numbers of people in the sex industry are largely founded on the flawed assumption that decriminalisation would increase the numbers of people involved in prostitution. The Committee is satisfied that such assumptions have been proved to be unfounded.

One of the consequences of decriminalisation has been the illumination of the workings of an industry which have historically been hidden. Sex workers and brothel operators can now be more open about their occupation. Similarly, street-based sex workers are now able to be more visible since soliciting in a public place is no longer illegal.

Greater visibility of the sex industry is not indicative of growth of that industry. Further, the Committee considers increased visibility to be a desirable consequence of decriminalisation for those who are most at risk in the industry, namely street-based workers and under age people involved in prostitution.

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.

Recommendations

The Committee considers ongoing counting of the numbers of sex workers may be necessary to monitor the impact of the PRA. The current review has been undertaken after a relatively short period, and the long-term impact and operation of the PRA have not been assessed. Keeping track of the numbers of people involved in the sex industry will benefit any future assessment of whether the PRA is achieving its purpose.

Continuing to monitor the numbers of sex workers will also prove useful in any investigation into the influences on people entering or exiting the industry. The Committee supports the undertaking of longitudinal studies to better understand reasons for entry, involvement in, exit and/or re-entry into the sex industry.

Monitoring numbers of sex workers may also be necessary for the evaluation of programmes designed to assist people to leave the industry, or the performance of agencies tasked with delivering such programmes. However, as smaller programmes may have little impact on the numbers of sex workers overall, monitoring the progress of the individuals enrolled would provide a better indication of the programmes' efficacy.⁶

The Committee recommends NZPC maintains the databases of street-based sex workers created by outreach workers in Auckland, Wellington and Christchurch for the Committee's review. The Committee also recommends NZPC continues to monitor numbers of brothel-based workers and SOOBs to provide an ongoing record of the numbers of people involved in street-based sex work. NZPC reports it intends to continue both the databases and ongoing monitoring.

⁶ As noted elsewhere in the report (Chapter 5), there are currently no programmes specifically designed to assist people to avoid working in or exit the sex industry.

The Committee also recommends that 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.

3 The PRA and Human Rights

Human rights are central to the purpose of the PRA. Section 3(a) of the PRA provides that one of its purposes is to create a framework that ‘safeguards the human rights of sex workers and protects them from exploitation’. It is important to determine the exact nature of the human rights that must be upheld when considering this aspect of the purpose of the PRA. There is no fundamental human right not to be discriminated against on grounds of occupation. The relevant international human rights instruments to which New Zealand is a signatory are useful when considering this issue.

3.1 International Conventions

The Human Rights Commission (the HRC) provided the Committee with information on relevant conventions. The first United Nations treaty against trafficking is the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1949. It criminalises those who exploit prostitution, while treating sex workers as victims, without criminal or other liability.

Article 6 of the Convention for the Elimination of All Forms of Discrimination Against Women 1978 requires States Parties to suppress ‘exploitation of prostitution of women’. It does not prohibit prostitution or stipulate how it should be regulated, with States Parties themselves left to assess the ‘appropriate measures’ necessary.

In 2001, the United Nations Convention Against Transnational Organised Crime was supplemented with a protocol to address the increased trafficking of women and children both across and within national borders. Article 3 of this Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2001 also focuses on ‘the exploitation of the prostitution of others’. The definition of trafficking in the Protocol marks a significant development in trafficking law. It implies that transporting or transferring adult sex workers who have given full and free consent is not trafficking (unless force, coercion, abduction, fraud or deception have been used to achieve that consent).

Articles 34 and 35 of the Convention on the Rights of the Child require States Parties to take steps to address the sexual exploitation of children. Strong protections for children and young people are required, particularly in light of the State’s role as both guardian and protector.

In addition, Article 1 of the International Labour Organisation Convention 182 on the Worst Forms of Child Labour defines prostitution as a worst form of child labour and requires immediate and effective action to eliminate it.

In summary, the focus of human rights instruments is two-fold. First they condemn any form of child prostitution. Second, with regard to prostitution by adults, international human rights standards target ‘forced prostitution’ or ‘exploitation of women in prostitution’, rather than the abolition of prostitution itself. This has led to the emergence of a range of approaches to the regulation of prostitution internationally.

3.1.1 Case Law

In addition to the international conventions, there is abundant New Zealand case law on human rights, but only one case on the meaning of the term when considering the PRA. Section 3(a) of the PRA was considered by Heath J in *J B International v Auckland City Council*⁷, as he sought to determine whether a bylaw was counter to the purpose of the PRA:

[89] Section s3(a) refers specifically to safeguarding “the human rights of sex workers”. In my view that safeguard cannot be read in isolation. It must be read together with the balance of s3(a) which refers to protection of sex workers from exploitation. In my view, the “human rights” in issue are the rights not to be subjected to degrading or disproportionately severe treatment: s9 of the Bill of Rights. The reference to exploitation in s3(a) seems to support that interpretation. The “human rights” and “exploitation” concepts are stated conjunctively in s3(a). That necessitates an approach to interpretation which reflects the two underlying ideas.

3.1.2 Sex Workers’ Perceptions

Sex workers themselves, as surveyed by CSOM, seem to see their rights in terms of health and safety and employment rights, which fit more neatly in the ‘safeguard against exploitation’ aspect of section 3(a). But they are very aware that they have ‘legal rights’.

Table 9 Sex Workers’ Perceptions of Rights Under the Act by Sector

	Total %	Street Workers %	Managed Indoor %	Private Indoor %
We have no rights (N=739)	8.4	18.8	6.4	7.0
We have employment rights (N=681)	92.0	89.9	91.9	93.4
We have OSH health and safety rights (N=645)	93.8	90.9	95.0	92.9
We have legal rights (N=729)	95.9	96.3	96.1	95.5

In the qualitative interviews conducted by CSOM, most participants described having rights under the PRA, particularly in terms of safer sex and occupational health and safety and making them feel more ‘legitimate’.

Um well it definitely makes me feel like, if anything were to go wrong, then I’m, then it’s much more easier for me to get my voice heard. And um (.) I also, I also feel like it’s um some kind of hope that um there’s slowly going to be more tolerance perhaps of um (.) you know, what it is to be a sex worker. And it affects my work, I think, because when I’m in a room with a client, I feel like um (.) like I’m, like I feel like I am deserving of more respect because I’m not doing something that’s illegal. So um I guess it gives me a lot more confidence with a client because, you know, I’m doing something that’s legal, and there’s no way that they can, you know, dispute that. And um you know, I feel like if I’m in a room with a client, then it’s safer, because, you know, maybe if it wasn’t legal, then, you know, he could use that against me or threaten me with something, or you know. But now that it’s legal, they can’t do that.

(Jenny, Managed and Private, Female, Wellington, CSOM, 2007)

⁷ HC Auckland, Heath J, 14 March 2006.

Comment

The Committee concludes that section 3(a) safeguards the following rights: the right for those under 18 not to be used in sex work; the right for 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.

Chapter seven deals with the effect of the PRA in prohibiting the use of people under 18 in prostitution, and chapter ten deals with the right not to be subject to exploitative, degrading employment practices. This chapter discusses the third human right protected by the PRA, the right for adults not to be forced to engage in sex work.

3.2 Right for Adults Not to be Forced to Engage in Sex Work

Chapter five indicates that, contrary to some public perception, coercion into the sex industry is extremely rare in New Zealand. The more difficult issue is to what extent the PRA has impacted on sex workers' right to refuse to undertake sex work with particular clients or of a particular type. Most of those interviewed for the CJRC report accepted that a worker could refuse to take a client, but others prefaced this with 'but they have to have a good reason'.

If they do refuse we need an explanation. We won't allow nationality to be the reason – they don't have a right to discriminate. If the client is intoxicated or abusive, they don't have to if they don't want.

(Brothel Operator, CJRC, 2007)

In some cases, it appears it is difficult to refuse even with good reason.

One 18 year old worker had just finished a job. A big Samoan guy was waiting who she had not even had a chance to check out. He was really rough with her, held her down by her throat. She went out to complain to the manager who told her to 'go back in'.

(Brothel Operator, CJRC, 2007)

The overall impression gained by the CJRC in their interviews was that there were 'good' and 'bad' operators as regards allowing sex workers to refuse to provide commercial sexual services. The good ones tended to accept a worker's judgement, but even so insisted on their having a 'good' reason to refuse.

The CSOM survey asked whether workers felt more able to refuse a client since the enactment of the PRA. Around two-thirds responded that they did. However, there was still a substantial number who reported feeling that they had to accept a client when they did not want to in the last 12 months, as indicated below.

Table 10 Ability to Refuse Clients in Last 12 Months by Sector

	Total	Street Workers	Managed Indoor	Private Indoor
	%	%	%	%
Felt they had to accept a client when they didn't want to in last 12 months (N=768)	35.3	41.7	37.5	29.1
Refused to do a client within the last 12 months (N=768)	69.8	85.5	61.3	77.1
Participants who had refused to do a client in last 12 months and who were penalised (N=540)	10.5	9.5	12.4	8.3
More able to refuse to do a client since law change (N=493)*	64.8	61.9	67.3	62.7

** only participants who had been working prior to the enactment of the PRA*

In the qualitative interviews conducted by CSOM, sex workers spoke of their right to say no, and how it had been enhanced by the decriminalisation of the sex industry.

As in beforehand a client um (.) you know, because of them having to make the offer to you, um the sort of the negotiation power, I think, was a little bit more with them... Um whereas now you can sort of say 'no.'

(Karen, Managed, Female, Christchurch, CSOM, 2007)

Some sex workers reported that they had increased support from management when they refused a client, or to undertake a particular practice.

I had one instance when we went into the room and I said, "Look, I'm sorry but you can't go down on me." And he said, "Okay, I want to cancel the booking." So I said, "Okay, that's fine." Took him out; that was not an issue at the desk. You know, if I didn't want to do something, I didn't have to do it, because what I'm expected to give is a hand-job, a blow-job with a condom, and sex with a condom, vaginal sex. If I don't want to do anything else, that's fine, you know, and I'm not at all expected in any shape or form whatsoever to put myself and my health at risk. And it's just made it a lot easier,

(Sheila, Managed, Female, Auckland, CSOM, 2007)

From what I hear from women who have worked, that I work with, who worked before the law changed, it's a lot better for us and it's a lot more open and girls aren't having to fight, you know, their own battles every night between clients and between employers.

(Vicky, Managed, Female, Wellington, CSOM, 2007)

Comment

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.

Notwithstanding that, it appears that there are still some sex workers who are being required to provide commercial sexual services against their will on occasion. This is clearly in breach of the PRA and of their human rights. Sex workers should be aware that, in this situation, they are fully entitled to refuse to perform the requested service, and if necessary leave the premises and/or complain to the Police. It may be that there is some uncertainty in the minds of brothel operators over this matter.

Recommendation

The Committee recommends that information on the requirements of the PRA regarding the right to refuse a client be made clear in the educative material that it is recommended be provided to brothel operators in chapter six of this report.

4 Health, Safety and Well-being

4.1 General Health of Sex Workers

The vast majority of CSOM survey participants reported having their own doctor. However, only half of the participants who reported having a doctor indicated that they had told him/her they were sex workers. Street-based workers were the most likely sector to report their occupation to their doctors, with managed workers the least likely. Most participants indicated that they accessed their general practitioner for their general health needs as well as their sexual health needs. There were few participants who reported that they did not go for sexual health check-ups, with managed workers the least likely of all participants to report this. There were no significant differences in access to services between the Christchurch females in the sample in 2006 and the Christchurch female sex workers in the 1999 study.

NZPC was seen as the main provider of health services and information in the CJRC Key Informant interviews. Offices in Christchurch, Wellington, and Auckland provided weekly sexual health clinics. Those in the industry valued greatly NZPC services in particular, which they felt had always been good. Most felt there had been no great change in access for sex workers, although some felt there had been improvements since the PRA.

No change – there have always been opportunities through NZPC.

(Brothel operator, CJRC, 2007)

NZPC is more organised and able to provide good information. People can be more open now. Workers acknowledge NZPC more. They say it's their right to get information, people are more confident.

(Brothel operator, CJRC, 2007)

NZPC itself felt the PRA had made their work easier, as it was possible to speak openly about sex work and safer sex practices.

CJRC asked about other impacts the PRA may have had on the health and well-being of sex workers. The main impact mentioned was an improved sense of well-being due to sex work no longer being 'criminal'. Sex workers could go about their business without fear of being arrested by an 'undercover cop'. The relief this created was frequently mentioned. Both NGOs and those in the industry that were interviewed felt that decriminalising prostitution made sex workers feel better about themselves and what they did.

There's just an increase in confidence now it is legal – been validated. It's hard to explain, but it's something I've seen. When the Act was passed, the girls knew about it. They didn't know the technicalities, but they knew it was legal and the work could be less demeaning.

(Brothel operator, CJRC, 2007)

Personally, I feel more confident now I've got rights. I still work secretly, but I can say 'the law says this'...There is now no fear of being caught by Police. It was difficult when I was younger. I felt like a criminal and was less assertive.

(SOOB, CJRC, 2007)

4.1.1 Safer Sex

Both the CSOM and CJRC reported high use of condoms throughout the industry. Over three-quarters of all CSOM survey participants reported that they always used a condom for any form of penetrative sex. 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.

In 2007, the AIDS Epidemiology Group reported to the Ministry of Health on HIV prevalence amongst 9,439 people who attended sexual health clinics in 2005 and 2006 (AIDS Epidemiology group, 2007). The report notes that none of the 343 self-identified sex workers were found to be infected with HIV. This compared to an HIV prevalence of about 4.4% among homosexual and bisexual men, 0.1% of heterosexual women, and 0.1% of heterosexual men. It should be noted that the sample (people attending sexual health clinics) are a higher risk group than the general population. Therefore, these figures probably overstate the HIV prevalence in the community.

The CJRC's key informants were not aware of any substantial change in the use of safer sex practices by sex workers as a result of the enactment of the PRA. It was generally felt that most sex workers had already adopted such practices – as a result of the effective HIV/AIDS prevention campaign that ran in the late 1980s. Many informants said that it was in sex workers' own best interests to look after their health. (Contracting a sexually transmitted infection (STI) meant they had to take time off work.) Sex workers in brothels seemed to actively monitor this – admonishing any sex worker who has provided sexual services without using a condom.

Despite no great change in safer sex practices, there were several positive effects reported as a result of the PRA. Both the CJRC and the CSOM reports cite numerous examples of sex workers being able to negotiate safer sex by stating that it is against the law for them not to practice it.

I now say, "I don't want your germs, do you want mine? I could be fined and go to jail, and if you take it off, then I could send you to jail".

(SOOB, CJRC, 2007)

Comment

It seems that most sex workers have taken measures to take good care of their physical health and particularly sexual health both before and after the enactment of the PRA. In part this can be attributed to the early response to the HIV/AIDS epidemic, including the establishment of NZPC and the services that it has since provided. NZPC is contracted by the Ministry of Health to promote health services to sex workers with a focus on HIV/AIDS and sexually transmitted infections (STIs), and the Committee strongly recommends that this continue.

The Committee is pleased to see reports of increased confidence, well-being and a sense of validation amongst sex workers, are a direct result of the enactment of the PRA. Such confidence will have a positive spin-off in many areas, such as the improvement of employment conditions, and the ability to ensure that safer sex practices remain standard throughout the industry.

4.2 Occupational Health and Safety Requirements and Rights

4.2.1 Knowledge of OSH Requirements and Rights

The PRA brought the sex industry under the Health and Safety in Employment Act 1992 (the HSE Act). In June 2004, the Occupational Safety and Health Service of the Department of Labour issued *A Guide to Occupational Health and Safety in the New Zealand Sex Industry*⁸ (the OSH Guide). The OSH Guide is available at www.osh.dol.govt.nz.

The OSH Guide sets out the health and safety duties, rights and responsibilities that are relevant for those involved in the sex industry. It covers sex worker health, workplace amenities, and psychosocial factors common in the sex industry. It covers a wide range of topics in considerable detail, aiming to assist owners and workers to implement best practice by providing practical means of doing so. The OSH Guide is supplemented by fact sheets giving specific advice on topics of importance to the document's users.⁹

The OSH Guide explains that the HSE Act allocates different rights and responsibilities depending on whether one is an 'employer', 'employee', 'principal', 'contractor', 'self-employed person' or 'person who controls a place of work', as these terms are defined in the HSE Act. It notes that 'It may be difficult to determine whether sex workers are employees or "self-employed" sub-contractors to the operators of businesses.'¹⁰ This is discussed further later in this chapter.

Of those who replied to the CJRC survey, two-thirds of brothel operators (18 out of 27) said they were familiar with the OSH Guide. The rest – mainly SOOBs – were either not familiar with the OSH Guide or had not seen it at all.

The OSH Guide was generally thought to be useful by brothel operators, though some were of the opinion that the OSH Guide needed to be more 'user friendly'.

Forty-one percent of sex workers surveyed by the CSOM reported that they had seen the OSH Guide. Three-quarters of the participants who reported having seen it had read it. Most (66.2%) of the participants who had read the OSH Guide reported that they found it very useful and informative and a quarter reported that the guidelines had made them more aware of their rights.

Some sex workers find the OSH Guide too bulky. One Department of Labour staff member interviewed by CSOM reported as follows:

there was a comment made that it was rather big. It was like a telephone book. Some of the people felt it was like a telephone book and that it just needed to be a small brochure, pamphlet um for people. But I mean this is really there to be able to answer any, pretty much any enquiry an employer might have or somebody who's dealing in an industry. It's not the sort of book that you'd give um one of the girls on Manchester Street.

(Occupational health nurse, CSOM, 2007)

Shortly after the PRA was enacted, the Ministry of Health, with the assistance of NZPC, also produced posters, stickers and pamphlets for sex workers, clients and brothel operators. The Ministry of Health material outlines the responsibilities that owners, workers and clients have

⁸ Production of the OSH Guide answered a recommendation of the Justice and Electoral Committee made when it considered the Prostitution Reform Bill.

⁹ The information in this paragraph is sourced from the Guide's website.

¹⁰ The Guide, p 19.

with regards to the HSE and the PRA, and the maximum penalties that may be imposed if those responsibilities are not met. They also list where further information can be found. The pamphlet for owners is printed in Chinese as well as English.

The Ministry of Health material was distributed widely at the time of production. All pamphlets, stickers and posters remain available from www.healthed.govt.nz.

Two-thirds of participants in the CSOM study had seen the Ministry of Health pamphlets and posters about clients and sex workers being required to use condoms. Most participants (67.0%) thought that these pamphlets and posters were useful and informative and 21.2% said they made them more aware of their rights.

Participants in the qualitative interviews conducted by the CSOM were asked to discuss occupational health and safety. Some discussed the relevance of OSH to people working in the sex industry and were unsure whether they would seek information and help for an OSH issue. Others described how they actively sourced information about OSH issues. Participants described the Ministry of Health pamphlets and posters favourably, especially in terms of their aiding safe sex negotiations, although participants had divergent experiences of having them on show in their workplaces.

Um we've got them placed on the, and I think they should be displayed on the wall, but they're actually placed on the bedside cabinets... Like I mean they're quite easy to read and have, they've got good information in them... So I think, you know, yeah, you know, it's better than that whole OSH thing.

(Pat, Managed, Female, Christchurch, CSOM, 2007)

But um I have seen them. Yeah, I'm pretty sure they were in the laundry and in the office, but those are the only places. Like they're not in any of the rooms or anything. Even though they should be, but yeah.

(Vicky, Managed, Female, Wellington, CSOM, 2007)

Some participants had actively sought information on OSH issues. One participant described how in one workplace, management had adapted the OSH Guide and Ministry of Health information to design their own information for workers and clients.

It was about two months later that we actually got the new booklets, and read all about it. Mind you, it wasn't hard to find in the fact that – like there was a bit in the paper. Um I remember ringing the Labour Department. I remember ringing um – who was the other one? – Health and Safety, and that was easy enough to get information. I was in the parlour one day and I thought, “Wonder, wonder, wonder,” ‘cause I remember hearing saying about that, so I decided to ring them. And they said well the booklet had, they hadn't got a pile just yet, but they were going to hand them out to all parlours and that every worker should actually have a copy of this, and every worker should have a copy of the new rules and everything, and all about the law and everything. And then next thing a pile come in, so we all had them. Not that many of them cared two hoots, but I said there is things in there. I said, “You know, there's like taxes and that. It's up to you whether you pay them or not. It's your choice.” Um the thing is, I said I can understand why the girls don't want to go into the tax department, because let's face it, you're branded then, and that to me is that stigma. Let's face it, to me there's that stigma attached to it.

(Josie, Private, Female, Napier CSOM, 2007)

Many brothel operators mentioned the service provided by NZPC and appeared to rely heavily on them for providing health information and safer sex materials. However, other operators try to keep their workers away from NZPC, with some NGO informants suspicious that this is done in an attempt to keep workers ill informed as to their rights. Some operators had their own in-house training, but many preferred to send their workers (particularly new ones) to NZPC.

Poor managers are careful to try and isolate a sex worker – keep them away from places like NZPC where they might find out what is acceptable and what is not. The poor brothel operators suggest that conditions are worse elsewhere. The girls don't want to leave in case it is so and they can't get back to working where they were.

(NGO – health, CJRC, 2007)

The CSOM study found that over 90% of survey participants were aware that they had increased OSH and legal rights under the PRA.

The majority of participants in the CSOM qualitative interviews reported having knowledge of their employment rights under the PRA, particularly 'in terms of safer sex and occupational health and safety', which makes them feel 'legitimate'.

Comment

The Committee commends the comprehensive nature of the OSH Guide, and would not like to see it reduced in any way. However, it could usefully be supplemented by more easily digested information in smaller handbooks or pamphlets.

The Committee notes that there is a reliance upon, and appreciation of, the role NZPC has played in providing information on OSH matters. However, government agencies and brothel operators have a shared responsibility to ensure that workers in the sex industry know who to contact for occupational health and safety concerns.

4.2.2 Adherence to OSH Requirements

The PRA provides that Medical Officers of Health are 'inspectors', with the power to enter and inspect brothels to check that safer sex practices have been adopted. The PRA also provides that a person is at work for the purposes of the HSE Act while providing commercial sexual services. This means that Occupational Safety and Health Inspectors can enter and inspect any place where commercial sex services are being offered, to check that the HSE Act is being complied with.

Once the PRA was in force, Ministry of Health provided training and guidance to Medical Officers of Health, who in turn offered training on the Act to brothel operators, the Police and other relevant parties. After this initial push, some public health service managers and Medical Officers of Health sought clarification from the Ministry of Health about whether there would be additional Ministry of Health funding to assist them to carry out their new functions under the PRA. The response was that the new requirements were a statutory function and that they would need to be carried out within existing resources.

We were told by the Ministry not to be proactive...We did actually discuss this issue of um doing something more active. But in the end um with the um HPOs [Health Protection Officers] involved we decided that none of it was feasible really. We did not have the resources.

(Medical Officer of Health, CSOM, 2007)

Um sort of a couple of managers have said “there’s no resources. Will you tell me what people are going to stop doing to enable you to do this?”...what we were proposing was quite a small time investment, which I think could have helped establish relationships and rapport so that if, you know, if there are big issues we would have been in a better position to do something about it.

(Medical Officer of Health, CSOM, 2007)

The Department of Labour’s Health inspectors (formally known as OSH Inspectors) ran a short-term project in the period immediately following the enactment of the PRA. This involved inspecting 12 brothels under the HSE Act. In addition to inspection, these visits involved the provision of information, education, and advice. However, this impetus was not maintained. A Department of Labour staff member interviewed by CSOM commented on a suggestion that had been made to him by a local NZPC representative that OSH do an assessment of all the brothels.

Um [X] had actually wanted that. We go and do an assessment of all of them and give them all, you know, make sure that they’ve got information and have an assessment of all of them. But um which is probably a good idea, but it’s not one of the priorities for us for this year. We sort of are involved in a range of other health priorities at the moment.

(Occupational Health Nurse, Department of Labour, Christchurch, CSOM, 2007)

As a result, the Department of Labour and Medical Officers of Health have taken a largely reactive approach to implementation of the health and safety role under the PRA, responding to complaints rather than initiating regular inspections. One notable exception was where the Medical Officer of Health and a Health Protection Officer visited all the brothels in the district. This happened after they responded to a complaint from an NGO about one local premises.

And um so um with tremendous trepidation – I mean I don’t think I’ve ever been so nervous – but I mean I visited, armed with large male Health Protection Officer, who’s even slightly more mature years than me. And um, the pair of us tip-toed into this place, which we’d been told was one of the less satisfactory premises around. And um, I meant it was all very well for me to go into this place, but how could I judge it if I’d never been into a parlour before? So that was what led to me into the process of visiting all our other parlours. So I realised there was just no way I could make any ability to um use the legislation constructively; a) if I wasn’t known and our role wasn’t known; and um b) if I had no idea of how the sex industry worked and um and of what, where it was and who was in it and what a brothel, actually what you could expect to find in a brothel.

(Medical Officer of Health, CSOM, 2007)

A further obstacle to taking a proactive approach to brothel inspection is the fact that there is no official list of the location of brothels, as there is, for example, with liquor licensed premises. Section 41(1) of the PRA restricts access to information held by the Registrar of the Auckland District Court regarding successful applications for brothel certification¹¹. Inspectors wishing to go beyond a complaints-based regime must find brothels themselves (usually with the help of NZPC).

Complaints are relatively infrequent. No Medical Officer of Health had dealt with more than 10 distinct complaints. Most are about unsafe sex practices or unhygienic premises.

¹¹ Even if this were not the case, there is no requirement for an applicant for a brothel certificate to provide the address from which the brothel will operate. A postal address is all that is required.

But it was around an unsafe work environment. The um, and the unsafeness related to both kind of, you know, hygiene things. They weren't clean sheets, there wasn't a process of, you know, laundering sheets and towels and things like that. Um and also the physical location of the work area was down a long dark corridor across the road from the main area, very poor lighting, no kind of alarm bells, no one else working over there. So there was a real risk of violence towards sex workers. So we referred that onto um the Department of Labour for OSH to follow-up.

(Medical Officer of Health, CSOM, 2007)

Almost all complainants are anonymous. Medical Officers of Health told CSOM that this made it very difficult to take action unless adequate detail was supplied to them. None of the complaints that had been investigated by Medical Officers of Health resulted in a prosecution.

One was from a member of, a member of the public, who had visited a brothel and was um (.) didn't, wasn't able to see the posters. He'd obviously read things, and um he told us he'd been offered sex without a condom. Now, we were obviously very concerned about that and wanted from him some details of um both the location of the venue, the times, the date, the name of the sex worker, the description, any details about him. And he wasn't prepared to provide any details um and the conversation, he very rapidly hung up.

(Medical Officer of Health, CSOM, 2007)

One prosecution for failing to adopt safe sex practices in breach of section 9 has been successfully taken. This was as a result of a confession made to Police. The offence carries a maximum penalty of a \$2000 fine. The offender, a client, was fined \$400.

Comment

The low number of complaints received by Medical Officers of Health may indicate that there is a high level of compliance with the law regarding safer sex and OSH requirements in general, particularly given that the research indicates there is increased awareness of such issues in the sex industry since decriminalisation. However, a more complete picture of compliance with the safer sex and occupational health and safety provisions of the PRA can only be established through the development of a good relationship with the sex industry to ensure cooperation around inspections and follow-up of occupational health and safety complaints.

The Committee recommends that Medical Officers of Health be resourced to conduct inspections of brothels, and that OSH place sufficient priority on the matter to enable them to accompany Medical Officers of Health when such inspections are made.

4.3 General Safety of Sex Workers

The CSOM survey participants were asked if they had experienced any adverse incidents in the last 12 months, including: refusal of a client to pay; having money stolen by a client; been physically assaulted by a client; threatened by someone with physical violence; held against their will; been raped by a client; or received abusive text messages. Street-based workers were significantly more likely than managed and private participants to report all of these experiences in the last 12 months, with the exception of abusive text messages (see Table 11). Few participants indicated that they reported adverse incidents to the Police, but most reported that they did tell some other person instead of the Police. There was little difference between sectors in reporting of adverse incidents.

Table 11 Adverse Experiences while Working in the Last 12 Months by Sector

	Total %	Street Workers %	Managed Indoor %	Private Indoor %
Experienced refusal by client to pay (N=769)	12.6	31.5	7.5	12.6
Reported to police	9.1	11.7	4.9	10.0
Reported to another person besides police	53.8	46.6	63.9	53.3
Had money stolen by a client (N=768)	8.3	24.4	4.2	7.9
Reported to police	15.5	10.6	19.3	18.3
Reported to another person besides police	63.1	64.3	71.7	53.3
Been physically assaulted by client (N=770)	9.8	13.4	10.4	7.3
Reported to police	19.2	19.2	13.5	32.0
Reported to another person besides police	75.9	64.5	86.4	53.9
Threatened by someone with physical violence (N=768)	15.9	39.5	9.3	16.3
Reported to police	20.0	17.8	14.8	27.0
Reported to another person besides police	70.0	72.2	77.3	60.1
Held somewhere against their will (N=766)	4.7	10.2	4.2	3.2
Reported to police	21.1	19.3	30.1	3.5
Reported to another person besides police	59.8	40.5	63.4	79.2
Been raped by a client (N=769)	3.0	5.3	3.3	1.5
Reported to police	32.1	6.0	35.4	62.3
Reported to another person besides police	65.0	53.8	71.0	62.3
Received abusive text messages from clients (N=771)	17.3	11.0	7.4	36.4
Reported to police	6.1	11.2	14.2	2.6
Reported to another person besides police	44.2	42.3	46.4	43.7

The Committee sought information from the Human Rights Commission (HRC) regarding the number of complaints of breaches of the human rights of sex workers both before and after the

PRA was passed. Unfortunately, for a number of reasons, prostitution or sex work is not captured in the HRC's database.¹²

Opinion among CJRC informants differed on the impact of the PRA on adverse incidents, including violence, being experienced in the sex industry. The majority felt that the PRA could do little about the violence that occurred.

Clients getting stroppy will always happen. This was the case before the Act and after it.

(Brothel operator, CJRC, 2007)

There has been no impact. There will always be ugly mugs.

(NGO – health, CJRC, 2007)

Others – but less than a quarter – felt there had been an improvement.

It's better now... I've heard workers say "don't have to take that crap anymore". They know they have a right to report stuff.

(NGO, CJRC, 2007)

The CJRC informants indicated that the PRA had encouraged the reporting of violence to Police, with some indication that the Police response may assist in resolving a situation. There was a sense that the PRA meant incidents of violence against sex workers would now be taken seriously. Of those feeling in a position to comment, the majority (70%) felt sex workers were now more likely to report incidents of violence to the Police. It appeared that this was particularly true for the street workers.

Since the Act ... I'd say the incidence of violence has been lessened a little, because the girls can stop a Police car now and make a legitimate claim. One night I was in a Police car with a Senior Sergeant and this girl had just phoned 111 and waved us down. She was traumatised – but perhaps because I was in the car and she knew me we were able to encourage her to report the assault.

(NGO, CJRC, 2007)

If it is serious I'd make a complaint now – over violence against me or someone I know.

(SOOB, CJRC, 2007)

While sex workers are more likely to report adverse incidents to Police, including violence, willingness to carry the process through to court was less common.

Street workers come in here and tell us, and we talk on their behalf if they want us to; others are happy for Police to know but won't report if it has to go through.

(NZPC, CJRC, 2007)

¹² 'Firstly it does not correspond directly to any of the areas or grounds of discrimination in the Act and nor is it mentioned specifically elsewhere in the legislation. Secondly, the Commission's frontline staff are mindful of the need to respect the privacy of people who approach us with complaints. Thirdly, as many people are vulnerable at the time they contact us, it is often inappropriate to ask for further personal information, particularly around sensitive issues such as sex work.' Extract from a letter to the Committee from HRC, 23 November 2007.

The CSOM report notes that, in general, women in the 1999 study by Plumridge and Abel in Christchurch were more likely to report using informal friendship and work relationships to deal with the aftermath of adverse work experiences than report these to the police or other 'helping' professionals (Plumridge & Abel, 2000). This appears to have changed little post-decriminalisation. Stigmatisation plays a key role in the non-reporting of incidents. For the participants in the 1999 study, important confidants for sharing bad experiences were fellow workers, friends and NZPC.

In Christchurch, NGOs had put in place a Phone Text system. Sex workers could voluntarily supply a cell-phone number to NZPC, and if NZPC received information of a potentially violent client (and the information was verified from the Police) they sent out alerts to those registered on the Phone Text system.

Comment

The decriminalisation of the sex industry was intended to make it more likely that sex workers would report violent behaviour by clients to the Police, increasing their safety as clients realised that they could no longer 'get away with it'. It appears that adverse incidents, including violence, continue to be experienced by those in the sex industry. There is conflicting evidence on whether violence is reported more often since decriminalisation, but clearly there is still a marked reluctance amongst sex workers to follow through on complaints. The CSOM report concludes that stigmatisation plays a key role in the non-reporting of incidents. The Committee has commented elsewhere that stigmatisation is still attached to the sex industry, and it will take time before it dissipates.

There has been a change of attitude to each other by some members of the Police and some sex workers. Some individual officers, and some Police districts, have gone out of their way to work with the sex industry, with Christchurch being the obvious example. However, there remains a level of suspicion and unease within the sex industry about the role of the Police, and the value or otherwise of reporting complaints to them. This is the inevitable result of years of the sex industry operating illegally, with the Police seen as posing a threat rather than offering protection. The Committee recognises that simply decriminalising an industry will not produce overnight changes in entrenched attitudes.

The Committee urges sex workers to report offences committed against them. It is in their interests, and in those of the industry. Equally, the Committee urges senior police officers to take the lead in maintaining a culture where sex workers' complaints are treated in the same manner as any other complaint. While progress towards mutual respect may be slow, it has mutual benefits, as the relationship between the Police and Christchurch sex workers has shown.

Recommendations

The Committee recommends that:

- 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;
- Government provides additional funding to the Ministry of Health to enable Medical Officers of Health to carry out regular inspections of brothels; and
- Police and the sex industry look to the approach taken in Christchurch as a mutually beneficial way of managing their relationship.

5 Avoiding or Exiting the Sex Industry

5.1 Introduction

One of the tasks the PRA sets for the Committee is to ‘assess the nature and adequacy of the means available to assist persons to avoid or cease working as sex workers’. To that end, the Committee commissioned a literature review of models of best practice of exiting the industry here and overseas¹³. This research was conducted by the CJRC. The Committee also commissioned research from the CSOM which, amongst other things, examined the practical reality of exiting the sex industry in New Zealand.¹⁴ The Committee has relied on the findings of this research to inform this chapter.

Four issues came through very strongly. First, the most common reason for entering the industry is financial. The most effective way to ensure people do not enter the sex industry is to help them find other ways 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. Finally, there are as many reasons for exiting as there are reasons for entering the sex industry, and a ‘one size fits all’ approach to ‘exiting interventions’ or ‘support and assistance in exiting’ will not be appropriate.

The Committee concludes that amendment to the PRA is not required, nor feasible, regarding avoiding entry and assisting with exiting. Rather, support targeted at individual sex workers who want to exit the industry needs to be made available from both NGOs and government agencies, and an appropriate level of ongoing, secure government funding is required.

5.2 Reasons for Entering and Remaining in the Sex Industry

Internationally, there has been a great deal of research on why some people decide to enter and remain in the sex industry¹⁵. There is a particularly large amount of literature on reasons for entering the industry. Such research is relevant to both avoiding and exiting the industry, as some of the reasons for entering the sex industry persist as reasons for not exiting.

5.2.1 Entering the Sex Industry

Most researchers accept that a combination of ‘push’ and ‘pull’ factors are at play when entering sex work. Push factors – particularly for young street workers – can include abuse and neglect, a breakdown in care-giving, school exclusion, homelessness, and lack of money. Pull factors can include excitement, encouragement from others involved in sex work, and a way of seeking affection. Freedom to work one’s own hours to accommodate childcare or study responsibilities is another pull, particularly for brothel or small owner-operator brothel (SOOB) workers.

Of most importance, though, seems to be that sex work can offer more money than is available from ‘straight’ jobs. For young sex workers in particular, money allows immediate gratification, which other waged work cannot provide. For others, too, the economic motive is strong. In a

¹³ *Exiting Prostitution: Models of Best Practice* prepared for the Ministry of Justice by Pat Mayhew and Dr Elaine Mossman, Crime and Justice Research Centre, Victoria University of Wellington (CJRC, 2007a)

¹⁴ *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers*, The Christchurch School of Medicine, 2007(CSOM, 2007)

¹⁵ See for example, the ‘References’ section of the CJRC Exiting report.

study of sex workers in Australia, most had entered the sex industry to support families, pursue higher education, pay off debts and buy cars, houses and/or other large expensive items (Perkins, 1991).

The CSOM research bore out the information gained from the international literature. The approximately 770 sex workers surveyed were asked to indicate the main reasons they entered the sex industry. The percentages of sex workers in each sector who indicated that each of the factors listed below was one of the main reasons for entry are presented in Table 12.

Table 12 Reasons for Entry into Sex Work in Each Sector

	Total %	Street Workers %	Managed Indoor %	Private Indoor %
Pay household expenses (N=749)	73.3	76.4	76.3	67.1
Pay for social life / going out / luxuries (N=738)	61.5	68.3	61.4	58.4
Saving up (N=734)	58.8	35.7	63.0	62.0
Pay for education (N=731)	24.1	16.6	27.0	22.7
Support children / family (N=729)	38.1	35.4	44.1	29.1
Made to work by someone (N=728)	3.9	8.1	2.7	3.8
Exploring sexuality (N=725)	22.5	31.8	17.8	26.1
Unable to get benefit/parental support (N=725)	14.3	28.6	11.1	12.8
No other income (N=733)	30.6	49.0	26.3	29.1
Friend was doing it (N=732)	31.7	54.1	30.2	23.8
Minding a friend and was asked to join (N=724)	10.0	21.5	6.7	10.2
Thought it looked exciting/glamorous (N=725)	26.0	39.1	25.5	20.7
Sex workers looked fun to be with (N=718)	22.8	43.8	20.0	17.5
Curiosity (N=732)	49.7	53.3	49.4	48.5
Support gambling use (N=726)	5.3	9.4	4.5	4.9
Support for alcohol or other drug use (N=728)	21.4	52.3	14.3	18.8
Money (N=756)	92.8	93.3	92.5	93.1
Because it's not against the law (N=695)	26.8	30.1	28.1	23.3

While a quarter of the CSOM survey participants said that one of the reasons they entered the industry was because it was not against the law, this did not follow through to the qualitative

interviews the CSOM conducted. Few participants in these interviews described choosing to enter the sex industry because of decriminalisation. Those who had entered the industry after 2003 did describe how they were aware that sex work was decriminalised and that they had rights, but the legislation was not cited as a major reason for entering the industry.

... I've worked illegally, you know, in other jobs. You know, I've worked under the table and that sort of thing. So, you know, I guess, I guess I would say I probably would have done it (sex work) anyway. But um you know, I certainly felt that because it was legal, it did, it did (.). yeah, I felt more safer about it, yeah.

(Jenny, Managed, Female, Wellington, CSOM, 2007)

There were significant differences in motivations for entry into sex work between female, male, and transgender workers. Female sex workers in the survey reported entering the sex industry predominantly for financial reasons. They were more likely than both male and transgender workers to report that they wanted to save up for something or support children or families, but less likely to report not having any other source of income at the start of sex work. Male participants, however, were more likely than both transgender and female participants to report that they were unable to get a benefit or parental support and were also more likely to report using the money to support their drug or alcohol use. There was no mention in any of the qualitative interviews of coercion into the sex industry. While some sex workers had some association with gangs, none reported being forced into the sex industry by them (CSOM, 2007).

Comment

The fact that few of the sex workers who were interviewed by CSOM indicated that decriminalisation of the sex industry in and of itself was the reason for entering the industry supports the conclusion drawn in chapter two: that the enactment of the PRA has not led to an increase in the number of sex workers operating in New Zealand.

The low number of sex workers who indicated that they were made to enter by someone else is reassuring, and even more so is the absence of evidence of coercion in the qualitative interviews. The Committee hopes that this will assist in clarifying the misconception that there are significant numbers of sex workers in New Zealand who are in the industry against their will.

The fact that financial considerations are such an important driver for entry into the sex industry indicates that the best 'means of avoiding working as a sex worker' is to ensure that there are other ways of earning money available to those considering entry. This means ensuring that education and vocational training are available for all. This is an objective that central government pursues for the good of the entire population, and there is no need for it to target potential entrants to the sex industry when doing so.

The government should focus its attention on those under 18 who are considering entering the sex industry. This is discussed in chapter seven.

5.2.2 Expected Length of Stay in the Sex Industry

CSOM survey participants were asked how long they expected to stay in the sex industry. There were significant differences between new entrants and participants who had been in the industry for longer than a year. Those who had been in the industry for less than a year were significantly less likely than long-term workers to report that they would be in the industry for longer than five years. Almost a third of participants were unsure of how long they would be working in the

industry, with longer-term participants more likely than short-term participants to indicate that they did not know how much longer they would be working.

Most of the participants in the qualitative interviews also expressed some uncertainty about their expected length of stay in the industry. Younger participants who worked in the managed sector tended to describe working to a plan, such as working to save to go overseas. These plans varied in length.

I think 25 (years old) about max...in about 5 years...cause it will be good to get heaps of savings and then by the time I'm 25 be able to put it for a house or something...Really, cause I've just been partying. That was like last year and now and now it's like it's been a year, I think I don't want to do this forever.

(Caroline, Managed, Female, Christchurch, CSOM, 2007)

Table 13 Expected Length of Stay in the Sex Industry by Years of Working in the Industry.

	Years of Working in Sex Industry		
	Total (N=759) %	<1 year (N=76) %	>1 year (N=683) %
Expected length of stay in sex industry:			
<1 year	20.9	48.4	17.8
1 - 2 years	21.7	15.2	22.5
3 - 5 years	12.7	13.1	12.6
>5 years	15.0	2.4	16.4
Don't know	29.7	20.9	30.7
Total	100.0	100.0	100.0

Few street-based workers discussed how long they would remain in the sex industry. Street-based workers who did, described leaving when they could 'turn their life around', such as when they could get on a drug rehabilitation programme.

So then [on entering a drug rehabilitation programme] I will be quitting, because I'm just at that point where I need to turn my life around, and I know I can do it, because I'm just, you know, I've had enough and I want to do it. I want to make changes. I can't do that if I'm still working, you know.

(Joan, Street, Female, Christchurch, CSOM, 2007)

Older, more experienced participants also discussed uncertainty about expected length of stay in the industry. Many discussed getting older and not wanting to 'be in the industry forever,' however, few had specific ideas about how long they intended to stay in the industry.

5.2.3 Taking ‘Breaks’ from the Industry

Half of the participants in the CSOM survey indicated that they had taken a break from the industry at least once since the start of sex work (see Table 14). Breaks differed in length from a few weeks to more than two years, though 58% of breaks were for more than 6 months. Private workers were more likely to report having had a break than street-based or managed workers.

Table 14 Breaks from Sex Work in Each Sector

Stopped Working at Least Once Since Start of Sex Work	
	%
Street Workers (N=201)	45.4
Managed Workers (N=368)	48.1
Private Workers (N=189)	59.3
Total (N=758)	51.4

The most frequent reason survey participants gave for taking a break was because of a new relationship, where participants either did not want the partner to know that they worked in the sex industry, or where their partner did not want them to work in the sex industry any longer. Another common reason was because of children, either because of pregnancy or because of wanting to take time off to raise children. Street-based workers were especially likely to give this reason, with around a quarter of street-based workers who had had a break reporting this. The other most often cited reasons were because they wanted, or had received, employment in a straight job or because of holiday or travel, especially for private and managed workers, but less so for street-based workers.

In the qualitative interviews, participants discussed burn-out and simply being tired of the job as reasons for taking a break.

Um I stopped working because I just, I reached that time when, “Agh, I don’t want to do this any more. I’d rather clean. And I’ll generate the extra by cleaning and I’ll do some studying.” And I felt it probably had a bit of a conflict of interest with what I, where I was working as well at the time. Um I’m a social worker, and you know, I was a sex worker and I was doing another job as well working with um single parents, and I felt, “Yeah, I’m not doing this. It’s probably not really, you know, that sort of moral or ethical that I’m doing this. So okay, no sex work.”

(Pat, Managed, Female, Christchurch, CSOM, 2007)

By far the most commonly reported reason for returning to the industry after a break was financial need. Sixty-seven percent of all survey participants who had been on a break returned because they needed the money. Half of the survey participants reported that the money was the thing they missed most when not working. However, one-fifth reported the loss of camaraderie or the company of their fellow workers as a key factor. The in-depth interview data supported these findings.

Like we had the best of everything. Money just never, we didn’t think about money, and for the last 7 months that’s all I’ve been thinking about is that money. It’s like I haven’t had that money at all. And then like when it comes really hard and when we have arguments and fight

with me and my partner, well the guy that was now my partner, I'm like off to the [inaudible] off to the road to work.

(Sally, Street, Female, Christchurch, CSOM, 2007)

Many described taking time out of sex work due to being in committed relationships or when they were pregnant and had children. Participants who had child care commitments also described re-entering sex work for time out from home and the importance of their workplace friendships.

The reason why I keep coming back, oh 6 months is, yeah, just giving me the 6 months with my children and things like that. But the reason why I've come back is because at home it's just me and my two children, and being up here, you're around other females that are in the industry. You know what they're going through, they know what you're going through. You know, it's just like a big family up here, and I love being around adults. Don't get me wrong, I love kids too, but I love being around adults as well.

(Hilda, Managed, Female, Napier, CSOM, 2007)

5.2.4 Remaining in the Sex Industry

Many of the factors that draw sex workers into the industry persist as factors for remaining in it, and indeed explain why it can be difficult to exit. The 'rewards' pose the impediments to exiting.

International evidence shows that the money on offer is a compelling incentive to remain working (and the biggest draw for those who exit for some reason, but then return). Certainly, sex work can be well paid: a 2003 study of 216 sex workers in Queensland aged 18 or older showed an average weekly income of A\$1,500 a week when the average weekly earnings in Queensland was approximately A\$900 (pre tax)¹⁶. This may largely explain why job satisfaction is higher than is popularly believed. In the Queensland study, two-thirds of brothel and sole workers said they would choose sex work again and felt the future held good prospects for them. Only a third of street workers held these views.

The economic advantages of sex work also emerged from a study of 130 female sex workers in London. They were followed up for 15 years to look at career and health patterns both among those still in sex work and those who had exited at some stage (Ward and Day, 2006). Many women had remained in the sex industry for long periods even when other choices presented themselves, such as those associated with completing vocational training or higher education. Women also combined other jobs with sex work, or completed education and training in other fields while working in the sex industry.

While there are no current comparable figures for New Zealand, the CSOM research shows that financial motives are the key reason for remaining in the sex industry across all of its sectors. Over 90% of all sex workers surveyed cited money as a reason for staying in the industry.

¹⁶ Information supplied by the Queensland Treasury.

Table 15 Reasons for Staying in the Sex Industry in Each Sector

	Total %	Street Workers %	Managed Indoor %	Private Indoor %
Pay household expenses (N=743)	82.3	90.0	83.9	76.3
Pay for social life / going out / luxuries (N=730)	67.0	72.4	65.3	67.4
Saving up (N=730)	68.4	44.0	72.3	72.9
Pay for education (N=720)	25.2	13.4	29.4	23.6
Support children / family (N=724)	40.4	40.6	46.7	29.6
Made to work by someone (N=715)	1.4	4.6	0.8	0.9
Enjoy the sex (N=701)	39.0	50.8	34.8	40.1
Unable to get benefit/parental support (N=715)	10.8	16.4	12.4	5.4
No other income (N=726)	25.8	33.7	26.9	20.5
All my friends do it (N=715)	14.5	43.3	10.5	7.6
It's exciting and glamorous (N=713)	22.7	39.3	19.7	19.9
Sex workers are friendly/fun to be with n(N=705)	42.2	49.3	48.9	27.3
Support gambling use (N=717)	3.9	11.3	1.4	4.5
Support for alcohol or other drug use (N=722)	16.7	45.1	10.7	13.5
Money (N=756)	92.7	98.3	91.9	91.5
Flexible working hours (N=739)	83.3	87.4	81.3	84.6
Because it's my job (N=719)	51.3	69.6	46.1	51.4
Don't want to do anything else (N=705)	23.5	29.7	21.5	23.8
Don't know what else to do (N=711)	17.6	30.1	16.4	13.5
Can't get help to leave (N=710)	6.6	17.8	5.4	3.2
Don't know how to leave (N=710)	10.4	24.4	8.4	7.0

Money is by far the most important motivator for remaining in the sex industry; however, it is not the only one. More than 40% of street-based workers also reported that all their friends were in the industry and nearly half of all managed and street-based workers indicated that sex workers were friendly and fun to be with. As a job option, sex work was also valued by more than 80% of the participants because of its flexible working hours. A quarter of all survey participants did not want to do any other work. Over a third of all survey participants (39%) reported that they remained in sex work because they enjoyed the sex and street-based workers

were the most likely sector to report this. Street-based workers were more likely than managed or private workers to report that they did not know what else to do, that they could not get help to leave and they did not know how to leave.

Comment

While there are many reasons for entering, remaining in, and returning to the sex industry, the over-arching theme seems to be financial need. Apart from the street-work sector, the need to support alcohol or other drug addictions is a relatively small driver. For some sex workers, working in the sex industry also fulfils a social need, with street workers in particular reporting that they gain a sense of community in the sex industry that would otherwise be lacking in their lives.

While successful exit strategies will have to be tailored to individual sex workers who want to leave the industry, it is apparent that they will need to offer a realistic economic alternative to sex work. Education and/or vocational training offer the opportunity for eventual economic reward, but those offering support to those wishing to exit the industry will need to accept that sex workers may continue to work within the industry while gaining such training.

5.3 Impact of the PRA on Exiting

The enactment of the PRA dramatically increased public awareness of the sex industry in New Zealand. While negative attitudes and the stigma attached to working in the industry were challenged by decriminalisation, some sections of the community still strongly disapprove of involvement in the industry. The higher profile of the sex industry has led some sex workers to fear more for their anonymity, although many sex workers interviewed by researchers indicated that they feel safer because of the enactment of the PRA.

While the PRA expressly takes a neutral stance on the sex industry (decriminalising it while not endorsing or morally sanctioning it), it implicitly promotes exiting the industry. As part of its review, the Committee was required by the PRA to consider means available to assist sex workers to exit the industry.

Section 18 provides that a person's benefit under the Social Security Act 1964 cannot be cancelled or affected in any way by his or her refusal to engage in sex work. This allayed fears that were voiced at the time the PRA was being debated that the unemployed could be forced into sex work because to refuse it would render them ineligible for a benefit.

Section 18 also deals with entitlements under the Injury Prevention, Rehabilitation, and Compensation Act 2001 (e.g. ACC payments). These entitlements can be affected if an individual refuses to accept work which they are capable of doing. However, these conditions have been altered to exempt sex workers. Entitlements for a sex worker capable of returning to sex work, but who decides not to do so, are not affected. This ensures financial support while other employment options are explored.

Finding employment outside the sex industry is clearly an issue when considering exiting. One factor that potential employers will take into account is a criminal record, and so by repealing prostitution-related offences from the criminal code, the PRA has removed one possible barrier to exiting. Sex workers and brothel operators are no longer at risk of getting a criminal record as a result of working in the industry.

Prior to decriminalisation, Police had kept a record of those working in the industry. This information could come up when individuals applied for jobs that required Police screening (e.g. security, banking or roles involving contact with children). Following the passing of the PRA, it was agreed that the Police registration system was inappropriate. Where possible, the information the Police had collected was placed into New Zealand Archives, and has been authorised to be destroyed.¹⁷ This was viewed positively by many of the key informants interviewed by the CJRC. However, there was still uncertainty among informants over the status of this information, and whether sex workers applying for jobs that required Police screening could be guaranteed past information would not come up.

Comment

The enactment of the PRA has clearly removed some of the potential barriers to exiting the sex industry simply by removing the possibility that those in the industry will acquire criminal convictions for that involvement. However, the Committee is concerned about the industry's lack of awareness of the exemptions provided by section 18 of the PRA, and recommends that this information be included in the educative processes outlined in chapters six and ten.

5.4 Exiting the Sex Industry

5.4.1 Sex Workers Who Do Not Wish to Exit

Not all sex workers want to leave the industry. As indicated by Table 15, only 17.6% of sex workers surveyed remain in the industry because they don't know what else to do. While there is a common perception that sex workers are in the industry through desperation or lack of choice, most are not, and some may be offended by being offered assistance to leave. The CJRC key informant study found that some sex workers who worked in SOOBs, for example, did not feel that any assistance with exiting was necessary and some reminded the researchers that it was a career choice they were very content with.

It's a choice and it pays well.

(SOOB, CJRC, 2007)

I don't have a problem. I can come and go as I please. I've got qualifications, BSc, MA. I've developed good skills from being a sex worker too – empathy, good phone manners. I think anyone can get out if they want to. But I'd rather do two clients a day, earn \$200 and be able to watch TV for the rest of the day.

(SOOB, CJRC, 2007)

In the same study, NZPC commented that it was potentially offensive to be discussing with sex workers how they should be assisted to exit.

It is offensive to talk about exiting – it's a right to be able to be a sex worker. We don't need rescuing. For some it is just three to five years for an average career – a means to a goal. Get the money for the degree and then move on.

(NZPC, CJRC, 2007)

¹⁷ Stand alone information held by Police, e.g. paper records, photographs, has been destroyed. However, there is some information enmeshed in the Police's National Intelligence Application (NIA) database that is difficult to locate and isolate, and accordingly has not yet been destroyed.

The reasons some people do not wish to exit revolve around the benefits they gain from working in the industry. The CSOM study found very few participants who reported they had not benefited in some way from working in the sex industry (see Table 16). The main benefits indicated by the survey participants were the fact that they had survived, made new friends and made more money through working in the sex industry. In terms of long-term financial security, managed or private workers were significantly more likely than street-based workers to report that they had managed to save, had achieved a better lifestyle, had more assets, had more money, had been able to travel and had paid debts. For street-based workers, survival was a key benefit of working in the industry and 96.9% of street-based participants reported this. Many participants from all sectors enjoyed the contact that they had with most clients, as well as the people skills they developed through working in the industry.

Table 16 Perceived Benefits of Sex Work by Sector

	Total %	Street Workers %	Managed Indoor %	Private Indoor %
I've been able to save for house, car, etc (N=748)	59.1	30.2	63.1	65.7
I've made new friends (N=761)	86.1	85.6	89.9	80.0
I've become more assertive/confident (N=749)	77.7	81.0	77.2	77.3
I've got more skills (N=743)	64.7	74.4	60.1	67.9
I've had a better lifestyle (N=731)	73.4	57.0	74.9	78.3
I've got more assets (N=741)	65.8	51.1	65.1	73.7
I've got more money (N=752)	86.1	72.6	89.9	85.9
I've been able to travel/go on holidays (N=748)	60.9	50.9	58.2	69.7
I've repaid a student loan (N=738)	15.5	6.3	18.9	14.1
I've finished degree/course/other study (N=733)	15.2	8.4	15.6	17.8
I've developed people skills (N=748)	70.2	78.5	66.3	72.8
I've enjoyed contact with most clients (N=737)	69.9	71.5	67.0	73.9
I've enjoyed sex with most clients (N=727)	42.4	48.3	34.8	52.3
I've been able to pay my debts (N=755)	78.7	67.7	82.6	77.4
I've survived (N=746)	87.9	96.9	87.4	84.8
Been able to provide for children/family (N=738)	51.4	49.9	56.7	43.0
There have been no benefits (N=709)	5.9	9.1	5.2	5.5

In the qualitative interviews for the CSOM study, participants all discussed benefits they experienced from working in the sex industry. These benefits included having flexibility and freedom in their workplace, learning new workplace skills, meeting a variety of people and experiencing a sense of belonging.

Love it, I love it. I love meeting the people, I love doing what I do, I love like, you know, to me it's, oh some girls it may be just for money. With me it's not, it's money, yes, but I work for myself, which I love. Money, independence, um (.) meeting a variety of people. Like for me, like I have from young to quite old, so I have a variety of people. And working, like working part-time in a parlour, I get to meet other girls.

(Liz, Private and Managed, Female, Auckland, CSOM, 2007)

Comment

The Committee recognises that the decision to become and remain a sex worker is a legitimate one. Those who do not wish to exit should have that decision respected.

5.4.2 Sex Workers Who Want to Exit

The CJRC exiting report found that there is little evidence in New Zealand as to how many sex workers would like to leave. The CJRC key informant report found that there was some sensitivity to questions about exiting, and focused its questions regarding exiting on ways to assist those who wish to do so. The CSOM report looked at reasons for entering and staying in the industry, as these may remain effective as barriers to exiting. However, it did not quantify the number of survey respondents who wished to leave.

The CJRC exiting report refers to Saphira and Herbert's 2004 study of 47 sex workers that showed that two-thirds of sex workers had tried to exit, and a quarter had done so. However, the study was limited to those who had entered the sex industry before the age of 18, and its usefulness as a measure of the industry as a whole is limited accordingly.

The CJRC exiting report discusses two studies from Australia. One is from a survey of 64 sex workers (few of them street workers) by the Crime and Misconduct Commission in its review of the Queensland Prostitution Act 1999. Although many respondents were not sure of their future plans (40%), 15% indicated that they only planned to work in the industry a 'short while' and 9% said they would like to leave the industry now. Just over half indicated that they would like an opportunity to retrain for another career. On the other hand, just over a third said that they intended to stay in the industry. Another larger study of Queensland sex workers found that half the street workers said they would like to leave the industry, and 40% of brothel or sole workers wanted to (Woodward et al., 2004, cited in CJRC, 2007a).

Comment

While accurate numbers are unavailable, all the research indicates that there are some sex workers who would like to exit the industry, and others who do not envisage working as a sex worker for a long period of time.

5.4.3 Reasons for Wishing to Exit

The issue of why people want to exit the sex industry, and how they go about it, has been very much less well-researched than why people enter and remain in the industry. Ex-sex workers do

not readily offer themselves for study, and the research commissioned by the Committee was limited to those still in the industry.

Participants in the CSOM research described some of the negative aspects of working in the sex industry. These included continuing stigma and harassment from the general public to street-based workers, safety issues for all sex workers, the health consequences of shift work and inequitable work environments experienced by some in the managed sector. Some participants also discussed the temptations of activities on the fringes of the sex industry such as drugs and alcohol.

Um I really don't think that there's anything a law change would bring about to reduce the stigma and the attitudes that people in general have about the industry, um because most attitudes and opinions about us hookers is based on ignorance, bigotry, intolerance, and jealousy. And until those things change, there really isn't a whole lot more. I mean you can't really pass an amendment to the act to say that they're not allowed to treat us (?) any more - they have to say 'hello' - you can't, you know, that's um that's not going to happen. But beyond that, no. I think it's good that we are finally um able to do what we've got to do, whether we've got to do it for however long we have to do it, without the fear of being caught, arrested and being plastered around as guilty. For well, you know, at the end of the day all we're trying to do is get by like everybody else. It's just a job.

(Marge, Managed, Female, Auckland, CSOM, 2007)

The CJRC report found, with regard to exiting, that 'all the research paints much the same picture...It highlights sex workers frequently taking breaks because they are "sick of the clients", have "had enough" or their partner wanted them to give up.'

The CJRC report also noted that some researchers have found that exiting is often unplanned. In New Zealand, Saphira and Herbert (2004) found that exiting from sex work activity was not systematically planned but related to a variety of fortuitous events. Williamson and Folaron's (2003) study of 21 women who had exited from street work at some stage found it to be the result of 'daily hassles, acute traumas, and chronic conditions'.

The typology of Sanders (2007) (see table 17 below) regarding 'pathways to exit', found some differences as regards street workers and indoor workers, and also usefully summarises some common reasons for exiting.¹⁸

¹⁸ Note that Sanders' sample was relatively small, comprising interviews with 15 street workers and 15 indoor workers. However, this size of sample is appropriate for in-depth interviews from which typologies such as this can be developed.

Table 17 Pathways to Exiting (Sanders, 2007)

	Street Workers	Indoor Workers
Reactionary	A result of violence, ill health, or significant life events, such as having a child or imprisonment.	A result of a new relationship, violence, or being 'outed'.
	Reactionary exits can often not be well thought out, without plans of action set in place.	
Gradual planning	The intention to enter a drug treatment programme perhaps, or find new housing. They were often supported by specialist services.	Planning for a timed transition with alternative career and financial planning, a 'retirement' plan, and working less.
Natural progression	The desire for a new lifestyle – for instance, drug free and less chaotic.	Becoming older; feeling the career has gone on too long; or disillusionment.
'Yo-yoing'	Failed drug treatment and support packages led to re-entry. Having been fined, meant having to earn the money to pay.	Unplanned exit – perhaps wanting a career break, or less strain. Coming back because 'ordinary' jobs did not pay enough.

Comment

The variety of reasons for exiting, and the fact that the decision to exit can be unplanned, make devising support strategies for those wishing to exit complex. If government agencies or NGOs are going to assist with exiting the sex industry, they will need to be responsive to the needs of individual sex workers. They will also need to be able to accept that exiting, but later returning to the industry, or 'yo-yoing' is common, and must be accepted with patience by those trying to help.

5.4.4 Barriers to Exiting

The CJRC report found that there is general consensus that it is difficult to exit. Many studies point to the difficulties of exiting by documenting the frequency of trying to leave. For instance, the evaluation of 11 multi-agency projects across the UK for street sex workers found that just over two-thirds had attempted to leave on one or more occasion (Hester and Westmarland, 2004). A study in Victoria (Canada) of 201 sex workers showed that seven in ten had exited the sex trade at least once, and more than half exited three or more times. Those who had not done sex work for at least two years had attempted to leave on average five to six times before making the break (Benoit and Millar, 2001).

The CSOM research found that money was the factor that was cited by most survey and in-depth interview participants as making it difficult to leave the industry. Access to readily available money was something that 68% of survey participants reported would make staying away from the industry a challenge. They also cited the flexible working hours as something that made the sex industry difficult to leave. They discussed ways of making it easier to leave, which included the availability of good, well-paid jobs, with a higher minimum wage and equal opportunities. Thirty-four percent of participants reported that this would make leaving the sex industry easier with a further 17% citing the need for financial security or a win in the lottery.

There are other considerations too. The CJRC report found that, while those involved in prostitution are far from homogeneous, many have complex needs and have long-term

disengagement from services. Sex work can have become an entrenched lifestyle. Low self-esteem and feelings of social exclusion are not uncommon (Hester and Westmarland, 2004). Many, too, have lost the social support networks outside the industry that would ease transition into other sectors of society.

Indeed, some gain social support within sex work. The CJRC key informants interviews found that collegiality is something some sex workers might strongly miss. Jordan (1991) also showed the high level of camaraderie sex workers in New Zealand have.

Exiting can be difficult, too, as sex workers may be reluctant to approach services that they feel will judge and stigmatise them if they disclose their involvement in sex work.

Transgender sex workers discussed the difficulties they faced finding employment other than sex work, some refusing to go on a benefit.

Oh I wish I could have. If I could find a really good job, I would leave in a second, that wouldn't, like I said, discriminate me for what I am and be acceptive of like I am an employee, I'm not a trans-gendered person who they have to keep looking at funny. Yeah, I'm there to do the work. I will do the work and respect what's been given to me or been told to me. But don't just keep looking at me as like, "Oh she's a trans-gender," you know...I've been in so many jobs and you just hear it, you know. Um (.) and it's just like I'm there just to work, you know, pay my bills and leave. I'm not there to basically put what I am on show or display for everybody, so yeah.

(Terri, Street, Transgender, Christchurch, CSOM, 2007)

As identified in chapter eight, the Committee considers that street-based sex workers should be encouraged to either exit the industry, or stop working on the streets by moving to another sector of the industry. However, the research indicates that there are barriers to movement between sectors.

The CSOM study found that the majority of street-based workers and managed workers in the survey had not moved sectors during the course of their time in the sex industry, with 78.8% of street-based workers starting work on the streets and 92.3% of managed workers starting in the managed sector (see Table 18). Half of surveyed private workers had, however, begun their work in the sex industry in the managed sector.

Table 18 Sector of Original Employment by Sector of Current Employment in the Sex Industry

	Started Work		
	Street Sector %	Managed Sector %	Private Sector %
Working now:			
Street Workers (N=203)	78.8	18.4	2.8
Managed Workers (N=376)	3.9	92.3	3.8
Private Workers (N=180)	11.5	49.3	39.2

The reasons for the lack of movement out of the street sector include both pull and push factors. Street workers describe enjoying the freedom, flexibility and camaraderie of the street, and the fact that they can keep all the money they make. While they acknowledge that it may be dangerous, they claim to be 'streetwise' and to have other workers 'watching their back' so as to minimise danger. When considering leaving the street for brothel-based work, street workers do not like the idea of having a boss, turning over fees to him or her, having to keep certain hours and rules of employment, and having less choice over which clients they take.

Comment

The three most common barriers to exit are worries about financial insecurity, reluctance to lose the flexible working hours available in the sex industry, and the camaraderie and sense of belonging that some sex workers describe. If these factors are relevant to a particular sex worker, a successful exit strategy will involve paid employment with flexible working hours and a good support network.

Although there are many reasons for wanting to leave the industry, making a 'one size fits all' approach to offering support inappropriate, there are some barriers that will apply to all. One such is the stigma that still attaches to working in the sex industry, despite decriminalisation. This makes finding alternative employment and entering new social circles difficult for some. Others find that, while they have learnt useful work skills in the sex industry, the fact that they entered the industry when they were young means that they have learned no other specialist vocational skills. The important thing for those offering support to those considering leaving the sex industry is to identify the particular barriers facing the individual sex worker, and offer means of overcoming them.

5.5 Best Practice for Exiting

The Committee commissioned CJRC to research models of best practice for leaving the sex industry.

Table 19 summarises the main best practice principles the CJRC report identified with regards to exiting strategies. The best practice principles cover basic principles of delivery (such as accepting that there will be stops and starts, and that outreach should be adopted), as well as the nature and content of what is delivered (e.g. holistic interventions).

Table 19 Summary of Best Practice Principles for Exiting Interventions

Summary of Best Practice Principles for Exiting Interventions	
Holistic interventions	A range of different service providers need to be engaged.
Dealing with changes of mind	Interventions need to be patient and accept that sex workers trying to exit may take small, incremental steps.
Facilitating free choice	Sex workers need choices, but have to make their own decisions.
Dedicated services and brokerage	Dedicated services are needed to broker the provision of mainstream services. One-to-one support from a 'key worker' seems to work best.
Building trusting relationships	Relationships of trust can provide the basis for exploring routes out.
Adequate resourcing	To ensure good service provision. Continuity of resourcing is also important.
Public education	To raise awareness about the issues associated with prostitution, and that support services aim to develop routes out.
Outreach	Outreach maximises the chances of engaging with those who might be considering exit and who need extra reinforcement.
Location of services	Services should be close, but not too close, to areas of prostitution.

5.5.1 Holistic Approach

The main basic principle is that a holistic approach is needed to address the multiplicity of issues that sex workers often face when they want to exit the sex industry. No single agency will be able to respond effectively. The agencies that may need to be involved include those who deliver:

- income support and advice;
- housing support and advice;
- antenatal care;
- childcare and parenting support;
- mental health and healthcare services;
- education and training;
- budgeting advice; and
- employment services.

5.5.2 Dealing with Changes of Mind

It is important that services offering to assist sex workers exit the industry are aware of a stop-start pattern of exiting when planning and implementing support or intervention (Hester and Westmarland, 2004). Exiting may be a slow process, or amount to a gradual reduction in working.

5.5.3 Facilitating Free Choice

Another key principle of best practice is that services need to offer choice to sex workers, allowing them to go down routes which suit them best. Free choice is seen as a key factor in sex workers deciding to move into a more stable situation and then finally to exit. Of course, choice is a relative matter, and is reduced when economic necessity is the main driver for working in the sex industry (Hester and Westmarland (2004)).

5.5.4 Dedicated Services and ‘Brokerage’

Dedicated services to offer support or intervention are identified in the literature as a way of ‘brokering’ the provision of mainstream services. Sex workers can frequently be disengaged from the usual service infrastructures making it difficult for them to access mainstream services without some form of signposting or advocacy. The Home Office *Prostitution Strategy* (2006) sees dedicated support services as having the advantage of one individual (or agency) taking responsibility for ensuring that a coherent package of support is available. It should be delivered within the mainstream sector if possible, to avoid sex workers being treated as a ‘special case’.

One-to-one support is an important feature. Having a ‘key worker’ seemed especially important for young sex workers. It is likely to mean better continuity of service, and a stronger building of trust (Hester and Westmarland (2004)).

5.5.5 Building Trusting Relationships

The need to build trusting relationships emerges from the literature as a best practice principle. Outreach is important here as a basis for exploring routes out.

For services targeted at those involved in brothel-based sex work, a relationship of trust needs to be established with brothel operators so that support workers can visit brothels and gain access to sex workers.

Building relationships based on mutual respect and trust has implications for how projects are staffed. Many of those who support sex workers are highly in tune with them, but when new resources are put in place careful selection is crucial. This is especially so for dealing with younger sex workers who are unlikely to accept advice other than that from ‘credible’ supporters. Greater understanding may be created when former and current sex workers staff services.

5.5.6 Adequate Resourcing

Competition for funds for social services is always intense. Added to this, services to assist sex workers can be costly, with the expenditure possibly not as popular with the community as other schemes.

However, one principle to emerge from the literature was that adequate resourcing is vital to ensure good service provision and so that ongoing relationships with sex workers can be

maintained. Continuity of funding is important. Funding issues have arisen, and will continue to arise, when dealing with the sex industry in New Zealand.

The very fact of decriminalisation may make funding harder to get. Bindel and Kelly (2003) comment in relation to Victoria (Australia), Ireland, the Netherlands and Sweden that ‘much promised funding for projects to assist women out of prostitution... never translated into action. It would seem that once prostitution is legalised governments want to pretend the problem has gone away’.

5.5.7 Public Education

Those who work in the sex industry have been stigmatised for a long time, and this continues to be the case. Accordingly, some community members may hold the view that those in sex work do not deserve government support. To overcome this, and to ensure that resources are made available, support workers and advocates for those in the sex industry need good public education and awareness tools for use within communities (Bindel, 2006; Home Office, 2006).

5.5.8 Outreach

Outreach work with sex workers is that which takes support to sex workers, rather than expecting them to access it themselves. It can involve youth workers, current and former sex workers, church groups and others. Outreach is central to efforts to support sex workers. But outreach can also be important for those offering assistance with exiting, simply because it maximises the opportunities for interaction with sex workers. Outreach work can help engage sex workers with services.

5.5.9 Location of Services

The location of services emerged as a best principle issue, but not a clear one. Where centres offering services are located in a ‘red light’ area, sex workers wanting to exit can find it difficult to go there. Centres elsewhere may offer better chances of success, as long as they are nearby. Opening hours can affect accessibility: rigid opening times and appointment systems can be deterrents.

Comment

The Committee recognises that this best practice model represents an ideal world approach. However, the Committee is concerned that it is so far removed from the situation in New Zealand.

The Committee notes the interchangeable use of the terms ‘support when exiting’ and ‘exit intervention’ in the best practice literature. It is apparent that offering general support and advice to sex workers may include facilitating an ‘exit intervention’. Currently, what little attention that is paid to offering services related to exiting the sex industry would be described as general support for sex workers.

That is not to say this is a bad thing. The merging of best practice principles for supporting sex workers and offering assistance in exiting the sex industry is largely because support services for current sex workers are seen as integral to successful exiting interventions.

5.6 Support for Those Who Wish to Exit Currently Available

The Committee sent a questionnaire to all local authorities regarding their responses to the enactment of the PRA. One question asked whether they had done anything to assist sex workers to exit the industry. Only two answered 'yes' (Christchurch and Manukau City Councils), with most stating that this was central government's job.

The Christchurch City Council has funded the Youth Cultural Development (YCD) Street Youth Work Project, which works with young people on the streets of Christchurch, particularly those under the age of 18, who are working as sex workers. The Christchurch City Council states that, amongst other things, the YCD Street Youth Work Project specifically works to.

- Empower young people to make informed choices through the provision of information and education on safe sex; and
- Broaden young people's lifestyle choices.

Since 2000, the Manukau City Council has consulted with and shared information with Te Aronga Hou Ināianeī, which works with street-based sex workers. Te Aronga hou Ināianeī aims to provide alternative employment and training opportunities as well as referral, health promotion, and support services for transgender sex workers. Manukau City Council has also worked with Māori and Pacific wardens to consider ways of managing the street-based sex industry, attended meetings with NZPC, and participated in the Under Age Prostitution Working Group, a multi-agency group focused on supporting youth.

Relevant central government agencies were asked about the adequacy of the provisions of the PRA to prevent young people entering the sex industry and assistance and information available for people wishing to leave the industry. None had specific programmes targeted at sex workers, but the Ministry of Social Development and the Ministry of Youth Development both responded that their general programmes would assist in helping young people avoid the sex industry.

more broadly, services delivered nationally by Child and Adolescent Mental Health and Addiction Services, Child Youth and Family Services, the Ministry of Social Development, the Ministry of Education truancy initiatives, and ourselves [Ministry for Youth Development] all contribute to arresting the precursors for poor outcomes such as under age sex work, criminal activity, violence, poor health and low educational achievement.

(Ministry for Youth Development, 2007)

Key informants were asked by CJRC what services they were aware of in their area to assist sex workers who wished to exit the industry. They provided the following list.

Christchurch – NZPC, YCD – Street Youth Work Project, Salvation Army outreach services, Work and Income New Zealand (WINZ)

Wellington – NZPC, WINZ, Evolve, Drug Arm

Nelson – Nelson's Women's Centre, WINZ

Hawkes Bay – Nothing identified

Auckland – NZPC, Streetreach, Salvation Army, Te Aronga hou Ināianeī Trust (Mama Tere).

Most of the agencies listed below provide general support services for sex workers, which include assistance with exiting if that was what was wanted. YCD's Street Youth Work Project and Te Aronga Hou Ināianeī Trust provide outreach services for young people on the street.

They also have facilities to do one-to-one case management with those who were keen to receive more support. YCD run a drop-in centre one night a week. Streetreach provide outreach support via mobile vans sex workers of all ages. Streetreach also operate a drop-in centre during the day and provide life-skills courses and employment related training.

The Committee was aware of Āwhina Teina an accommodation provider in Manukau. They had up to six beds available for young people who were either at risk of entering or wished to exit from prostitution. However, for various reasons, Āwhina Teina has since closed.

NZPC is contracted to the Ministry of Health to advocate for the rights, health and well-being of sex workers. However, NZPC also provides more general support and advice to sex workers (including help preparing a Curriculum Vitae), and act as brokers to other agencies who can assist further with alternative career options.

Employment and career services are provided by WINZ to the general public. Sex workers have the same right to access those services as the general public. NZPC, other NGOs and some sex workers report that, while some WINZ staff provide excellent services to sex workers, this is not always the case.

Comment

The Committee commends the NGOs working with sex workers. Sex workers have always been marginalised, and it is important that support and assistance is available to any marginalised group in society.

The Committee agrees with local authorities that providing support to those who wish to exit is more properly a central government role than a local one. However, local government could play a part in providing drop-in centres and offering funding to NGOs who work with sex workers.

The holistic approach described in Table 19 listed several services that need to be involved in supporting those who wish to exit the sex industry. These services are those generally offered by central government.

Best practice indicates that, ideally, a dedicated service acts as a broker for the exiting sex worker to access these services. An NGO, or several NGOs, who can build trusting relationships with sex workers, should be available to support and assist an exiting sex worker in her or his dealings with organisations that provide such services.

Central government has a responsibility to provide adequate, ongoing funding to the NGOs who act as brokers for sex workers. The Committee acknowledges that, in terms of the government agencies that supply services to people leaving work, the needs of exiting sex workers cannot be allowed to absorb more resources than is proportionate to their number. Central government also has a duty to ensure that staff are properly trained, and are sensitive to the particular needs of exiting sex workers.

Recommendations

The Committee does not recommend any amendment to the PRA or any other legislation to provide for greater assistance for those wishing to exit the sex industry.

The Committee recommends that central 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.

The Committee recommends that relevant central government agencies should have an ongoing duty to provide NGOs with information on services available to those sex workers wishing to exit, who could then have access to this information from a 'one stop shop'.

The Committee recommends that support for those who wish to leave the sex industry from the NGO(s) should be based on best practice principles as outlined in this report, tailored to meet the needs of the individual sex worker. In addition to the information about government services, the NGO(s) must be able to provide assistance to individual sex workers who need to access drug and alcohol treatment, counselling and life skills training, vocational training, and education.

Finally, the Committee wishes to stress that it is important that those who do not wish to leave the industry are also offered support and advice from NGOs that it recommend be funded. Provision of advice and information should be available to all sex workers on health and safety, professional best practice, rights and responsibilities, and available government services.

6 The Brothel Operator Certification System

6.1 Introduction

This chapter fulfils the Committee's statutory obligation to assess the system of certification for brothel operators. Specifically, the Committee must consider whether the system of certification 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.

6.1.1 Rationale Behind the System

In its report on the Prostitution Reform Bill, the Justice and Electoral Committee considered that decriminalisation on its own did not provide enough protection for sex workers. Therefore, a certification system was suggested to 'ensure those in control of workers are suitable for the role', and to 'help keep organised crime, criminal entrepreneurs and other criminals out of the industry' (Select Committee, 2002).

The Select Committee noted the licensing system then currently operating under the Massage Parlours Act 1978 (MPA) provided a model upon which a certification system could be based. In particular, the 'fitness of character' test in the new system should be similarly based on the applicant not having any previous convictions (although prostitution-related convictions would be excluded in the event the Bill was passed). The system was intended to be simple and straightforward to encourage compliance. Extending the fitness of character test to cover factors other than disqualifying convictions was considered to make the system too complex. Some of the Select Committee members also considered extending the regime to all operators was contrary to the spirit of the Bill and could undermine the rationale of decriminalisation. 'The criteria proposed to get certification should be open, transparent and related to the reason for having a certification regime – namely the protection of sex workers' (Select Committee, 2002).

The Select Committee concluded that, although its members could not agree whether to amend the Bill to include a certification regime, its consideration of the matter should be included in its report so that any Member of Parliament who chose to suggest such an amendment would have the benefit of the information considered by the Select Committee.

Consequently, during the final Parliamentary debates on the Bill, the then Minister of Justice Hon Phil Goff tabled a Supplementary Order Paper proposing a certification regime for brothel operators. Parliament agreed to the proposed amendment and the current certification regime was included in the PRA.

The proposed regime had many features in common with the system of licensing under the MPA. However, applicants under the new system did not have to be vetted by Police, and Police did not have a right to object to any applications. Also, operators no longer needed to supply the name and address of each business they were involved in, and did not need to supply the name of any managers or other staff they employed.

Some members of the Select Committee were concerned that certification would undermine the spirit of decriminalisation. This was addressed by applying the regime to only those operators in

control of sex workers. Sole operators and collectives of four or less sex workers where each worker controlled their own earnings were exempt. These were known as small owner-operated brothels (SOOBs). SOOBs do not have ‘operators’ and therefore do not require operator certificates. SOOBs are discussed further below.

Comment

The current system ensures, within certain parameters, the suitability of people to be brothel operators. It excludes people whose criminal histories may suggest they are not fit to be in a position of power over sex workers. However, as the Select Committee noted, it is possible to circumvent such a system by using a front person who has no disqualifying convictions.

The fitness of character test is premised on the belief that the sex industry is populated by people who have criminal tendencies who must be monitored and prevented from further offending. The Prostitution Law Review Committee considers that, as the rationale behind the law reform was to decriminalise the sex industry, continuing to vet people in the industry for criminal convictions is incongruous. However, the Committee also considers the illegal and clandestine history of the sex industry means criminal elements have been (and may continue to be) involved. In addition, the risk of exploitation faced by sex workers means that unscrupulous operators, or those with connections to organised crime, should be excluded from operating businesses of prostitution. Therefore, the Committee considers people with disqualifying convictions should continue to be prevented from holding operator’s certificates.

6.2 How the System Operates

6.2.1 Who Requires a Certificate?

Under section 34, every operator of a business of prostitution must hold a valid operator’s certificate. The definition of operator (section 5) includes anyone who determines when or where sex workers will work, under what conditions, and for how much money. This definition includes managers and receptionists.

The term ‘receptionist’ has a unique meaning in the sex industry. Receptionists may exercise a degree of control over sex workers similar to that of operators. Duties of a receptionist may include interviewing and hiring sex workers, and setting and supervising their working conditions.

Street-based sex workers are not included in the system of certification. Some street workers have ‘minders’, who could be considered operators of businesses of prostitution under the PRA; however, this is yet to be tested by the courts. As discussed in chapter eight, high levels of regulation may not be appropriate, or possible, in the street sector.

To be eligible for an operator’s 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 as discussed above. A person in New Zealand who has a temporary or a limited purposes permit is not allowed to act as an operator of a New Zealand business of prostitution. In addition, a person who holds a provisional residency permit may have that permit revoked if they operate or invest in a business of prostitution.¹⁹

¹⁹ Section 19 of the PRA, pursuant to section 20(1)(d) of the Immigration Act 1987.

6.2.2 The Application Procedure

Applications for operators' certificates are made to the Registrar of the Auckland District Court. The application must include an authenticated copy of an official photo identification (e.g. passport, driver's licence), and one authenticated passport-style photo.²⁰ An application fee of \$205 applies.

Applications are reviewed by the Registrar to check if the applicant has a criminal record. A person is disqualified from holding a certificate if they have been convicted at any time of committing, or attempting to commit, certain criminal offences. The disqualifying offences are:

- Any offences under the Prostitution Reform Act 2003 (other than under sections 39(3), 40(2), and 41(3) which relate to certificates);
- Section 98A of the Crimes Act 1961 (participation in an organised criminal group);
- Sections 127 to 144C of the Crimes Act (sexual crimes);
- Part VIII of the Crimes Act (which includes murder, manslaughter, assault, and abduction);
- Sections 234 to 244 of the Crimes Act (robbery, extortion, and burglary); Section 257A of the Crimes Act (money laundering);
- Any offence under the Arms Act 1983 that is punishable by imprisonment;
- An offence under sections 9, 12A or 12B of the Misuse of Drugs Act 1975;
- An offence under section 6 of the Misuse of Drugs Act (other than possession of a Class C controlled drug); and
- An offence under any other section of the Misuse of Drugs Act, but only if it relates to a Class A or Class B controlled drug.

Anyone who has been refused a certificate because they have been convicted of a disqualifying offence can apply to the Registrar of the Auckland District Court to have their disqualification waived. The Registrar will refer the application to a District Court Judge for determination. The Judge must be satisfied that the offending happened so long ago, or was of such a nature, that it should not be a barrier to getting an operator's certificate. The Judge also needs to be satisfied the applicant has not been associating with people who might themselves be disqualified. The Judge will ask the Police to provide a report on this matter.

In limited circumstances, criminal histories may be concealed under the Criminal Records (Clean Slate) Act 2004.²¹ Therefore, if they are eligible under this Act, a person may not have to disclose previous convictions in their application for an operator's certificate.²²

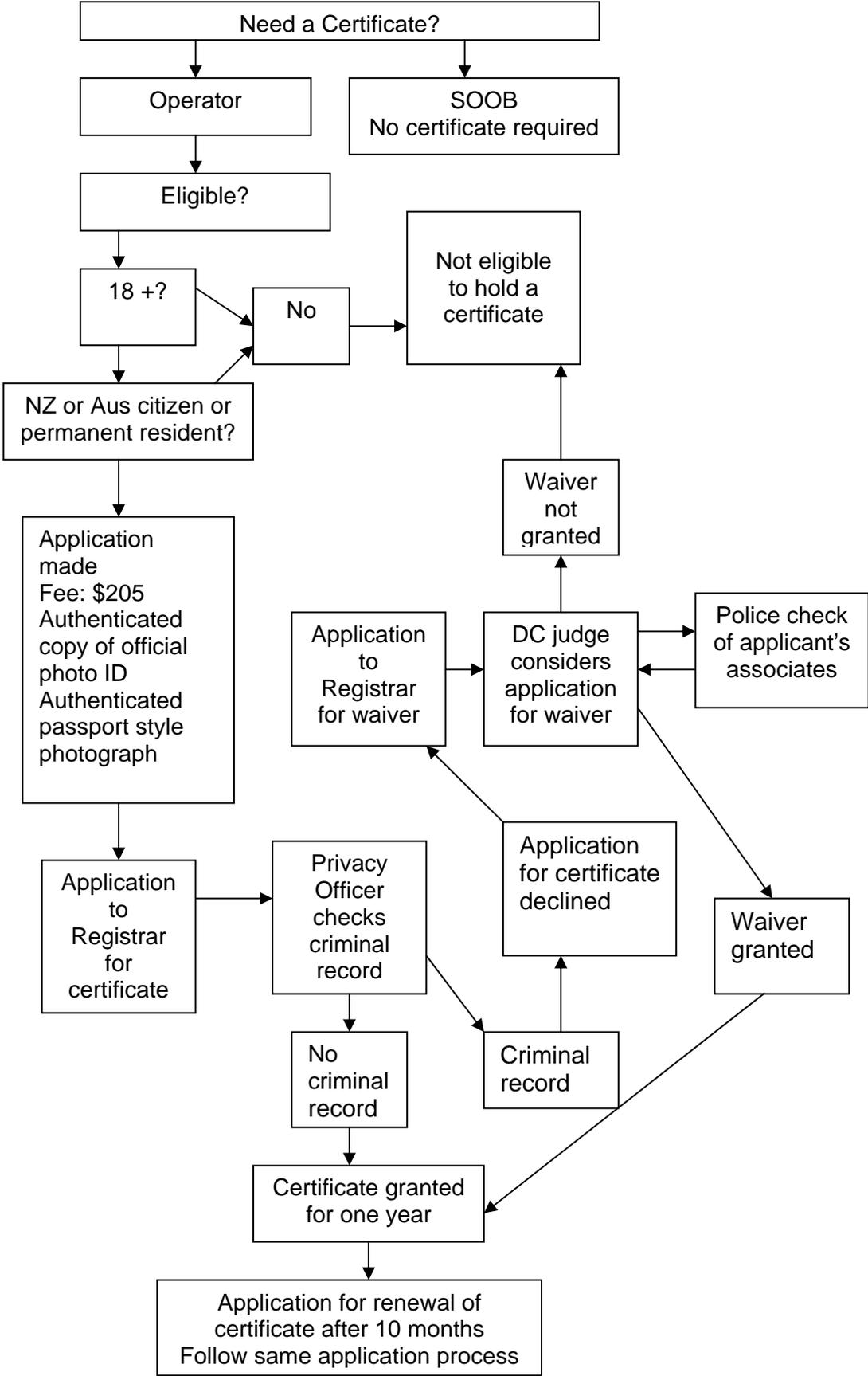
Certificates are valid for one year from the date of issue; however, they may be revoked if the certificate holder is subsequently convicted of a disqualifying offence. Applications for renewal of the certificate can be made anytime within two months before the current certificate expires. The full application of \$205 applies. Replacement of lost certificates costs \$25 and requires a similar application process as for the original certificate. Before the Registrar will issue a replacement certificate, he or she must be satisfied that the original certificate has been genuinely lost or destroyed. The following section provides a flow chart of the application process.

²⁰ For authentication purposes an authorised person is someone who is a lawyer, a Registrar or Deputy Registrar of any District Court, a Justice of the Peace (JP), Kaumātua, Minister of Religion, Police Officer, or Registered Medical Professional. They must not be: a relative, or part the applicant's family, or live at the same address as the applicant, or be the applicant's employer.

²¹ An individual is eligible to conceal their criminal record under the Criminal Records (Clean Slate) Act 2004 if the seven-year rehabilitation period has elapsed since their most recent conviction and all fines or reparations have been paid, no custodial sentence was ever imposed, they have never been committed under mental health provisions, and have never been convicted of a specified offence (sections of the Crimes Act 1961 dealing with sexual offending).

²² Criminal Records (Clean Slate) Act 2004 section 2, (Relationship to other provisions).

6.2.3 Application Procedure Flow Chart



6.2.4 Penalties

Every person who operates a business of prostitution without a valid certificate is liable on summary conviction to a fine not exceeding \$10,000.²³

A certificate holder must present their certificate to a member of the Police for inspection within 24 hours of a request to do so. Failure to do so renders the certificate holder liable on summary conviction to a fine not exceeding \$2,000.²⁴

The Registrar may cancel a certificate if the certificate holder is convicted of any disqualifying offences, or has his or her waiver of disqualification cancelled. Failure to return a cancelled certificate within one month of its cancellation is an offence liable on summary prosecution to a fine not exceeding \$2,000.²⁵

Between June 2003 and March 2008, three charges were laid against operators for not holding a valid certificate.²⁶ As of March 2008, one of the charges had resulted in a conviction for which a fine was imposed, the other two had been withdrawn (Ministry of Justice, 2008).

6.2.5 Register of Brothel Operators

The Auckland District Court maintains the register of holders of brothel operator's certificates. The register is available to be inspected by the applicant or holder concerned and the Registrar. Members of the Police may also inspect the register, but only for the purpose of investigating an offence. Contravention of this section is an offence punishable by a fine not exceeding \$2,000. The register only contains the details provided on the application forms, and therefore does not include the name or names of any business of prostitution the certificate holder is associated with.

Under the MPA, Police were automatically informed of any application for a massage parlour licence, and had the opportunity to object to any applicant being licensed. Police kept records of all licences issued in their jurisdiction for the purposes of inspection, and had the right to enter and inspect any premises licensed under the MPA.

It is appropriate the register not be publicly available. In any case, because access to the information on the register is tightly restricted and not linked to businesses or premises, the register is very rarely inspected, if at all. Information from the Auckland District Court indicates Police have requested information from the register on one occasion. However, as the enquiry was in relation to business premises, the register does not contain this information (Ministry of Justice, 2007).

6.2.6 Licences Required under Local Bylaws

As noted in chapter nine, seven territorial authorities have implemented local licensing systems for commercial sex business. Licences must be obtained in addition to the brothel operator's certificate and an additional fee paid. Fees for licences range from \$200 a year to \$500 a year.

²³ PRA section 34(2)

²⁴ PRA section 40(2)

²⁵ PRA section 39(3)

²⁶ PRA section 34(2)

6.3 Victoria's Brothel Licensing Regime

The Committee considers the brothel licensing regime in the Australian state of Victoria provides a useful comparison to New Zealand's current system owing to its longevity, its close geographical proximity, and the familiarity that New Zealanders have with its culture.

6.3.1 How Victoria's Regime Operates

In 1986, prostitution was legalised in Victoria. A licensing regime for all 'prostitution service providers' was introduced by the Prostitution Control Act 1994.

To be eligible for a prostitution service provider's licence, applicants must be at least 18 years old and not have been convicted of an indictable offence in the last five years or had a previous prostitution service provider's licence cancelled. The Business Licensing Authority (BLA) must also consider the applicant to be a suitable person to trade as a prostitution service provider, and not associate with persons of bad repute.²⁷ The BLA must also be satisfied the applicant can ensure employees' occupational health and safety. Applicants are interviewed by a representative of the BLA and tested on their knowledge of the relevant legislation (Business Licensing Authority, 2008).

Applicants for a service provider's licence must have a planning permit from the local territorial authority. Small owner-operated brothels are exempt from the licensing regime, but must apply for an exemption and are still required to obtain planning permits.

An application fee of A\$3,770.30 per year is payable in addition to the licence fee of A\$2,154.40 per year. Brothels are limited to six rooms. A fee of A\$404 is charged for each additional room. Separate licences (and fees) are required to run an escort agency or have escorts working from a licensed brothel.

Prostitution service providers who trade without a licence risk a fine of A\$66,000 and/or five years' imprisonment.

Brothels must be personally supervised by the licensee, or a currently approved manager, at all times when trading. Similar application criteria apply to those wishing to become an approved manager of a prostitution service provider's business. A fee of A\$273 is payable upon application.

6.3.2 Criticism of the Victorian Licensing Regime

The licensing system in Victoria has been criticised for being too restrictive, the application process too onerous, and the compliance costs too high. As a result, non-compliance is common and a two-tiered industry of legal (licensed) and illegal (unlicensed) brothels has developed (Jordan, 2005).

The Justice and Electoral Committee noted that workers employed in licensed brothels in Victoria can be exploited by licensees. They may have no control over their working conditions or what services they provide.

²⁷ The Business Licensing Authority is an independent body set up by the Business Licensing Authority Act 1998. It administers licensing, registration and permission provisions under various legislation, including the Estate Agents Act 1986, Motor Car Traders Act 1986, Second-Hand Dealers and Pawnbrokers Act 1989, the Travel Agents Act 1986, as well as the Prostitution Control Act 1994. New Zealand does not have an equivalent body.

The Australian sex workers' organisation, Scarlet Alliance, has criticised the Victorian system of licensing. Scarlet Alliance says that the majority of individual sex workers are working outside the system and are therefore exposed to exploitation due to their legal vulnerability (Scarlet Alliance, 2005).

The exemption for small owner-operated brothels has also been criticised by Scarlet Alliance because too many other parties are involved in approvals, creating privacy issues for the applicant. It is considered these regulations create a barrier to compliance.

Scarlet Alliance also argues that 'the regulations do not allow for the natural progression from sex worker, to small business operator, to brothel or escort agency operator, as it favours only people who are well resourced, who may not have the expertise nor be the best persons to run these businesses'(Scarlet Alliance, 2005).

6.4 The New Zealand Certification System

6.4.1 Information From Brothel Operators

Participants in the CJRC key informant interviews (2007) considered certificates were not hard to get and compliance with the current system is generally good. Unlike in Victoria, Australia, a two-tier system of certified and uncertified (illegal) brothels does not seem to have developed in New Zealand. However, some operators reported that it was in fact too easy to get a certificate.

They are too easy to get. I've lost confidence in the system. I used to be a car dealer and to get a licence was really hard. For this, there is no training, no interview, no asking what you know. What's the point?

(Brothel Operator, CJRC, 2007)

The reapplication process was criticised for being inconvenient and time consuming. In particular, the requirement that new authorised photo identification be provided with each renewal was seen as a hassle; it was suggested that a new photo should only be required every five years. Participants suggested a simplified renewal process, rather than having to provide a complete application each year.

It was also reported that some brothel operators do not require their receptionists, or other staff, to hold certificates, and some businesses were avoiding certification by operating under the guise of SOOBs. This may in part be due to some confusion over who is required to hold a certificate (CJRC, 2007).

6.4.2 Small Owner-Operated Brothels

Some operators who took part in the CJRC interviews questioned the definition of a SOOB and whether the rule of four or less sex workers was per shift or in total. Police have also raised this question, and suggest clarifying the definition of SOOB would close the theoretical loophole that is being exploited by some operators who claim to be SOOBs because only four sex workers work at one time (NZ Police, 2007).

The purpose of requiring no certificates for SOOBs is that only people who have control over sex workers should be required to be certified. If an operator sets the working conditions of any sex workers (even one), they require a certificate. Likewise, if more than four sex workers work

from the same premises it is no longer considered a SOOB, and one or all of the workers may require a certificate.

When the PRA was enacted, it was not intended that individual sex workers should be certified. However, in keeping with the aim to improve protections for sex workers, it was considered those who held positions of control over sex workers should be subject to some form of scrutiny – hence a system of certification.

In light of the changes to the certification system (discussed below), the Committee does not consider any amendment to the definition of SOOB is necessary.

6.4.3 Inspections and Ongoing Monitoring

Neither the Registrar of the Auckland District Court, nor the wider Ministry of Justice has a role in enforcing or monitoring operator certificates once issued.

Medical Officers of Health may enter and inspect brothels for the purposes of determining compliance with requirements for sex workers and brothel operators to adopt and promote safer sex practices. In addition, under section 31 of the Health and Safety Act, Health and Safety inspectors (formally known as OSH inspectors) may enter and inspect any place of work. Inspectors may enter homes (e.g. SOOBs) either with the consent of the occupier or if authorised to do so by a warrant issued by a District Court Judge. In addition, local authorities may carry out inspections for compliance with standards for such things as spa pools.

Police officers do not have a responsibility to inspect brothels for compliance with either health and safety requirements or employment conditions. However, many brothels have liquor licences. This allows inspections by Police, District Licensing Authorities and Health officials.

Police may request an operator produce their certificate for inspection within 24 hours. Police may obtain a warrant to enter a brothel to investigate offences²⁸ relating to the use of under age people in prostitution and being an operator while not holding a certificate.²⁹ Police may also obtain a warrant to enter a brothel or any business to investigate the commission of any offence, including offences not exclusively related to the PRA.

Police has noted the removal of the powers to enter a brothel for inspection previously conferred under the MPA (NZ Police, 2007). However, Police did not suggest such powers be reinstated.

Compliance operations are undertaken by Immigration New Zealand (INZ) with the support of Police (Immigration, 2008). Officers may enter any business, including brothels and SOOBs in the course of investigating offences under the Immigration Act 1987. These operations are based on information and intelligence received by INZ. The operations locate specific persons working illegally in the sex industry (in contravention of section 19 of the PRA), and aim to detect any evidence of trafficking in persons. Trafficking is discussed in chapter 13 of this report. Police may check brothel operators hold valid certificates during the course of these investigations.

Negotiating working conditions and responding to unfair management practices are traditionally matters for workers' unions. Although not strictly a workers' union, the NZPC currently fulfils an advocacy role for sex workers. This matter is discussed further in chapter ten. NZPC

²⁸ Pursuant to section 30 of the PRA.

²⁹ Sections 23 and 34 of the PRA respectively.

maintains relations with most brothels, but has no responsibility or authority to check an operator's certification. If a brothel operator does not wish sex workers in their establishment to have contact with NZPC, he or she may refuse entry to outreach workers.

6.4.4 Brothel Operators' Comments on Inspections

The major complaint expressed about the certification system was that, once a certificate was issued, it was never checked. For many participants in the CJRC interviews, the fact that their certificates were never checked made the system pointless.

I have never had anyone ask about our operator certificate. I have had checks on the liquor licence but not a check for operators of brothels. I would like to see operators' certificates regularly checked for all brothel operators.

(Brothel operator, CJRC, 2007)

Ongoing monitoring is key to a robust system of certification. In addition to the calls from within the industry for more checks on certificates, it was suggested operators should also have knowledge of the PRA and appropriate management practices in the sex industry. Operators should be called on to demonstrate this knowledge in order to achieve and retain their certification (CJRC, 2007).

6.4.5 Numbers of Operator Certificates Issued

Information from the Auckland District Court indicates the number of brothel operators' certificates has decreased each year since the certification system was implemented.

Factors responsible for the decline in the number of certificates may include: brothel operators not requiring that all staff that should hold a certificate do so; a lack of enforcement; and/or brothels operating illegally as SOOBs; or a decline in the number of brothels.

In addition, brothel operators report increasing difficulty making commercial sex businesses viable. Some businesses that opened since the PRA have struggled to attract workers and clients alike, and have closed as a result.

The number of new applications has also dropped each year. There is no process for identifying whether the new applications are from new brothel owners, or merely new staff in existing brothels. However, given information about the size and viability of the industry it seems unlikely that many would be in relation to new brothels setting up.

6.5 Does the Current System Work?

The Committee considers that the certification system as it is currently operating is not working satisfactorily. Parliament introduced the system to ensure that only those 'suitable for the role' should be in a position of power over sex workers. In part, the certification system has achieved this. The fitness of character test appears to be robust, in that the Committee has no evidence that people have attempted to circumvent the system by using a 'front person' with no disqualifying convictions to apply for a certificate, as some members of the Select Committee feared might occur.

However, the certification system does not have any attributes that would enable it to meet the Select Committee's criterion of protecting sex workers. Having established the certification

system, no enforcement procedure has developed to check that brothel operators obtain and maintain current certification. Further, there is no established regime to ensure that brothel operators are promoting the welfare and occupational health and safety of managed sex workers. The Committee considers that these are major failings of the certification system.

Finally, the Committee considers that requiring annual applications for certificates is unnecessarily frequent.

6.6 The Way Forward

The majority of the Committee considers the current system of certification has merit, but the current provisions require greater enforcement to give effect to the purpose of the PRA. One Committee member considers a certification system is unnecessary, and would prefer the system be abandoned. The member notes the current system does nothing to prevent exploitative or coercive practices in the sex industry, however concedes it also does no harm.

The danger of a two-tier system of legal and illegal brothels developing must be avoided. Therefore, regulation should initially be kept to a minimum whilst still providing adequate checks on those managing sex workers. Gradual changes are needed to ensure the confidence and support of the industry.

6.6.1 Who Should Require a Certificate?

The Committee considers all those who manage the working conditions and/or payment received by sex workers should continue to require a certificate.

6.6.2 Who Should be Eligible for a Certificate?

The Committee considers the current threshold of eligibility to hold a certificate (over 18 and NZ citizen/permanent resident) is sound; therefore the Committee does not suggest amendment of these provisions.

The current provisions regarding disqualification from holding a certificate on the basis of criminal convictions are also sound, and should be retained.

Certificate holders should have an understanding of the requirements on them under the PRA, and in general employment legislation. Operators should also ensure their management staff comply with the PRA, and health and safety in employment requirements.

The Committee recommends that, to obtain a certificate, an applicant must also agree to facilitate inspections.

6.6.3 Information Should be Provided when Certificates Issued

The Committee is aware that some brothel operators maintain a liquor licence which requires them to demonstrate an understanding of their rights and responsibilities in relation to the sale of alcohol. This could provide a model for brothel certification. However, the Committee considers that, at this early stage of a decriminalised sex industry, the introduction of too onerous a certification system may lead to the development of a two-tier industry, as has occurred in Victoria. Therefore, the Committee considers that applicants should not be required to pass a test on their rights and responsibilities as brothel operators before being supplied with

an operator's certificate. Rather, they should be provided with information about these matters at the time of receipt of a certificate. This should increase brothel operators' knowledge about good employment practices and where to obtain further advice and support. Information packs should include:

- Information about rights and responsibilities under the PRA;
- Information about brothel operators' responsibilities regarding occupational health and safety and safer sex practices;
- Information about rights and responsibilities under the general employment legislation;
- Sample employment contract;
- Information about tax/ACC compliance;
- Information about the local bylaws;
- Information about exiting the industry; and
- Who to contact for further information and support.

The Committee recommends the Department of Labour work with NZPC and industry representatives to compile a user friendly information package for applicants. The Committee also recommends the Department of Labour update the existing OSH guidelines to include a user friendly management guide for the sex industry.

The cost of the provision of information should ultimately be borne by the certificate holder. However, as high compliance costs have been demonstrated to be a barrier to compliance in other jurisdictions, the Committee recommends the application fee should remain at the current level. Increased fees should only be considered at a time when the system is operating with the confidence and support of the industry. The Department of Labour may require additional funding from central government to cover the cost of increased inspections and the provision of information.

6.6.4 Should Certificates be Linked to Businesses?

The Committee considered the question of whether a register of businesses of prostitution (brothels) should be created to facilitate the inspection regime. Initially, the majority of the Committee considered certificates should link the applicant to their business or businesses and the premises from which they operate. The list of businesses should be available to be searched by Police, Immigration, OSH, and Medical Officers of Health for the purposes of inspecting brothels and ensuring compliance with the provisions of the PRA.

However, a minority of the Committee strongly disagreed. It was argued that smaller operators would be disadvantaged by having to declare their business address as they may be operating from a rental property where the landlord is unaware of the nature of their business. In addition, smaller operators often move premises. The requirement to update certificate details each time they moved would become onerous and may become a reason for non-compliance.

NZPC advise that there is a considerable level of fear in the sex industry that information held in registers may not remain confidential, and may be misused. Experiences of the Police registration system prior to the PRA have made both sex workers and brothel operators extremely apprehensive about registers.

Under the MPA (Police registration system), anyone employed in a massage parlour had to register with local Police. Sex workers wishing to place advertisements in newspapers also had to first register with Police. According to NZPC, Police sometimes treated complaints from victims of crime differently if the victim was a sex worker. This is despite the complainant not

mentioning a connection with the sex industry. Because of their involvement in the sex industry, complaints about rape or other sexual assaults were minimised, and often not taken any further (NZPC, 2007).

NZPC also reports a fear exists that information about people's involvement in the sex industry may surface when trying to leave the industry (e.g. via Police checks done by new employers), and when travelling overseas to jurisdictions where prostitution is illegal.

The Committee considers the likelihood of a register of brothels being misused is minimal. As noted above, there are strict restrictions on access to the current register, and similar restrictions and safeguards could be applied to a register of brothel premises. However, the Committee also acknowledges the very real fear that exists within the sex industry. Any possibility that this fear could be reason for brothel operators not to comply with certification should be taken seriously.

The Committee also notes information from Immigration New Zealand that the absence of a list of businesses of prostitution does not prevent inspections and compliance operations. In addition, IRD has been able to contact brothel operators without the aid of a list of businesses.

Therefore, on balance, the Committee concluded that a register of businesses of prostitution is not required. However, the majority of the Committee recommends that the list of certificate holders be available to be searched by Police, Immigration, OSH, and Medical Officers of Health for the purposes of inspecting brothels, ensuring compliance with the provisions of the PRA and other relevant legislation.

A minority of the Committee considers that the list of certificate holders should not be available to agencies on the basis that it is not necessary to establish the location of brothels, as this can be done by other means. In addition, the disclosure of the identities of certificate holders could lead some brothel operators to opt out of the certification process altogether, because of the fears outlined above.

6.6.5 Period of Certification Validity

Currently, certificates are valid for one year. The Committee considers the PRA should be amended so that certificates should remain valid for three years from issue.

6.6.6 Administration of the Certification System

As noted above, the Committee recommends the current criteria for disqualification from holding a certificate should remain. The Ministry of Justice, via the Auckland District Court, is the appropriate body to scrutinise criminal records. Therefore, the administration of the certification system should remain with the Ministry of Justice.

6.6.7 Brothel Inspections

The Committee considers that the Department of Labour should be the lead agency to manage the inspection of brothels. The Department should work with NZPC, other NGOs and industry representatives to establish an inspection regime that covers both OSH regulations and is also attuned to identifying coercive or exploitative practices. The Ministry of Health should continue to be responsible for inspection of brothels by Medical Officers of Health (for compliance with safer sex practices). Further powers to inspect brothels are not considered necessary. The Department of Labour may require additional funding from central government to cover the cost of increased inspections and the provision of information.

6.6.8 Amendment to the PRA

Amendments to the PRA are required to implement the Committee's recommendations regarding access to the list of certificate holders and the lengthening of the period of a certificate's validity.

6.7 Recommendations

The Committee recommends that the current brothel certification system be maintained, but that the PRA be amended to extend the period of certificate validity to three years.

The majority of the Committee recommends that the PRA be amended to ensure that 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.

The Committee recommends that comprehensive information on brothel operators' rights and responsibilities should be provided to applicants at the time they receive a certificate.

The Committee recommends that an applicant must agree to facilitate inspections to obtain a certificate.

7 The Use of Under Age People in Prostitution

7.1 Introduction

One of the purposes of the PRA is to prohibit the use of people under 18 years of age in prostitution. The Committee believes it is important to separately consider the operation of the PRA in terms of its impact on under age prostitution due to the potential harm to young people used in prostitution.

The PRA does not set out measures to prevent or address the causes of under age prostitution. However, the Committee supports the positive step made by the PRA in shifting criminal liability from under age people who provide commercial sexual services to those who arrange, profit from, or receive those services.³⁰

Sections 20 - 22 make it an offence to facilitate or receive payment for the commercial sexual services of a person under 18 years of age. It is also an offence to arrange for or to receive commercial sexual services from a person under 18. Under section 23, every person who commits an offence under sections 20 - 22 is liable to 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. Rather, they are considered to be a victim of the offences described above. Section 23(3) of the PRA reinforces this position, stating that no person under 18 years of age may be charged as a party to an offence committed under sections 20 - 22.

For the purposes of this chapter, the Committee has used the terms 'commercial sexual services' and 'prostitution'. A person under the age of 18 years who provides commercial sexual services is not termed 'a sex worker'. This is because the PRA refers to a person under 18 as being 'used' in prostitution, recognising the exploitative nature and illegality of the use of under age people in prostitution.

7.2 The Threshold for Providing Commercial Sexual Services

In its report on the Prostitution Reform Bill, the Select Committee noted that the nature of prostitution 'was such that there should be a prohibition beyond the age of consent' (Justice and Electoral Committee, 2002). The legal age of consent for sexual activity is 16 years (Crimes Act 1961).³¹

The age of 18 was chosen because it was consistent with the then legislation regarding the commercial sexual exploitation of under age people (section 149A of the Crimes Act, which was replaced by the PRA). In addition, the age of 18 is consistent with the definition of children in

³⁰ The PRA repealed section 26 of the Summary Offences Act under which any person, regardless of age, could be prosecuted for soliciting.

³¹ Sexual connection with a person aged under 16 years may constitute an offence under the Crimes Act, regardless of the commercial nature or otherwise of that sexual connection. Under section 134, every person who has, or attempts to have, sexual connection with a person under 16 is liable to imprisonment for up to 10 years. The penalty for having, or attempting to have, sexual connection with a child aged under 12 years is higher still – imprisonment for up to 14 years (section 132). It is not a defence to these charges that the young person consented or that the person charged believed that the young person concerned was of or over the age of 16 or 12 years.

both the United Nations Convention on the Rights of the Child and the ILO Convention 182 Concerning the Worst Forms of Child Labour (Justice and Electoral Committee, 2002).

The CJRC (2007) found a consensus amongst participants in the Key Informant Interviews that young people under the age of 18 should not be providing commercial sexual services. Several of those interviewed who worked in the industry also felt that 18 was too young; 20 was suggested as an alternative age.

Police does not have a formal policy position regarding the appropriate age threshold for commercial sexual activity, but does not support a lowering of the current age threshold.

There are age restrictions on other types of work in New Zealand. For example, an employer cannot employ anyone under 18 to work in any restricted area of licensed premises.³² There are also restrictions for younger employees, such as a person under 16 not being able to work after 10.00pm or before 6.00am, or during school hours.³³ The reason for restrictions of this nature is to prohibit work that will harm the safety, health or development of young people.

Comment

The Committee acknowledges that there are a variety of opinions on the age at which the threshold for the prohibition on use of persons in prostitution should be set. However, the Committee believes 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 ILO Convention 182.

7.3 International Legislation

New Zealand is not alone in prohibiting the use of people under the age of 18 in the provision of commercial sexual services. Various approaches have been taken in the states of Australia, in Canada and in the United Kingdom, including prohibition and management of commercial sexual services. Legislation in all of these countries contains provisions prohibiting the involvement of people aged under 18 years in the sex industry.

In the states of Australia, maximum penalties for offences relating to under age prostitution range from 2 to 15 years imprisonment, depending on the relevant legislation of each state or territory.³⁴ In the United Kingdom, the Sexual Offences Act 2003 imposes different maximum penalties for 'paying for the sexual services of children', depending on the age of the young person involved (under 13, 16, or 18 years of age). The maximum penalties range from a fine to life imprisonment (relating to a young person aged under 13 years).³⁵ The Canadian Criminal Code also creates offences relating to the involvement of persons aged under 18 years in the sex industry, but specifies a minimum, as well as a maximum, term of imprisonment. Penalties range from 6 months to 14 years' imprisonment.

³² Section 161 of the Sale of Liquor Act 1989 makes it an offence to employ a person under the age of 18 years in any capacity in any restricted area of a licensed premises (unless for the purposes specified in section 161(3)). A person convicted of this offence is liable to a fine of up to \$2,000.

³³ Section 58 of the Health and Safety in Employment Regulations 1995. Section 70 of the Regulations states that anyone who commits an offence under this provision is liable on summary conviction to a fine.

³⁴ There are even higher penalties in some jurisdictions for offences involving children aged under 12 or 14 years. Some jurisdictions allow the imposition of a fine as an alternative or an additional punishment to imprisonment.

³⁵ The maximum penalties set out in section 47 of the Sexual Offences Act (United Kingdom) are dependent on factors such as age, whether the sexual services involved penetration and whether the charge is laid summarily or on indictment.

7.4 The Nature of Under Age Prostitution

7.4.1 The Number of Under Age People Used in Prostitution in New Zealand

There are considerable difficulties in determining the number of under age people used in prostitution in New Zealand. Under age people, like sex workers aged over 18 years, transit in and out of the sex industry. Some under age people are only used in prostitution for a short time and others enter and exit the industry repeatedly. In addition, the report *Protecting Our Innocence: National Plan of Action Against the Commercial Sexual Exploitation of Children* (Ministry of Justice, 2002) notes that the involvement of some young people in the sex industry in New Zealand can be described as ‘opportunistic prostitution’ or ‘sex for favours’. These terms acknowledge that a young person may exchange sex for basic needs such as accommodation, safety, food, clothing or drugs, rather than for money. Consequently, these young people may be unlikely to perceive or define themselves as ‘sex workers’ or believe that they are being ‘used in prostitution’.

The Committee’s first report provided an estimate of the number of under age people used in prostitution in New Zealand, based on the best information available at that time. The report used information gathered from a telephone survey of Police Districts and Areas over the period of November 2003 to April 2004. It was estimated that there were 210 under age people involved in the sex industry at that time, with a majority located in the street-based sector. A quarter of all under age people were identified as working in escort agencies and 10% were working privately. A cautious approach should be taken to these findings, however, as the level and quality of police information on the sex industry varied greatly around the country.

Police notes that, ‘as a result of the legislative changes, Police...has less contact with the sex industry, and there is no systematic intelligence gathering and collation’ (NZ Police, 2007). The reports by CJRC and the study by CSOM provide some information regarding under age prostitution in New Zealand. However, given the different data collection methods, and the changed nature of the industry, comparisons would be meaningless.

The *Key Informant Interviews* undertaken by the CJRC (2007) included discussions about the number of people used in under age prostitution. The majority of informants reported that the PRA had not affected the number of under age people used in prostitution in Christchurch or Wellington.

I don’t think there has been any significant change. From what we see, there has been no change – just seasonal ups and downs. In school holidays there are more. The papers get it wrong. Over a 12 month period, [NGO] reported 40 to 50 contacts with those under 18 years, but probably 50 contacts are with just five girls.

(NGO, Christchurch, CJRC, 2007)

In Auckland, informants were divided as to whether there had been any change. One NGO reported an increase of young people working on the streets, whereas another reported no change. In Nelson and Hawke’s Bay, informants either felt unable to comment or were not aware of any under age people being used in prostitution.

The CSOM (2007) study provided data on the personal characteristics of survey participants, including age. Of the 772 participants, 1.3% were aged under 18 at the time of the study. Broken down by geographic location, 5.0% of participants in Christchurch were aged under 18 at

the time of the study, compared to 0.4% in Auckland, 1.7% in Wellington and none in Napier or Nelson.

The CSOM report also notes that 41 out of 772 survey participants reported entering the sex industry when they were aged under 18 after the enactment of the PRA. Of these 41 participants, 25 were working in Christchurch, 8 in Auckland, 7 in Wellington and 1 in Nelson. The report also notes that of these 41 participants, 31 started work in the street-based sector, 8 in the managed sector and 2 in the private sector.

Comment

Based on the research and the information provided to the Committee, the Committee does not consider the PRA has increased under age involvement in prostitution. The Committee believes the media coverage of under age involvement in prostitution has often created an exaggerated impression of the numbers involved. 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.

7.5 Street-Based Under Age Prostitution

As discussed in chapter eight, street-based sex workers are significantly more likely than other sex workers to have experienced violence, threats of violence, to have been raped, had money stolen from them or been held somewhere against their will. Under age people are generally more vulnerable because of their age and are more likely to be used in prostitution on the streets, which increases their vulnerability.

The CSOM report provided data on the age of survey participants, broken down by sector. The report also provided data on age at entry into sex work, broken down by sector.³⁶ Of the sex workers surveyed, 56% of street-based workers were aged under 18 at entry into sex work. This is compared to 9.6% of managed indoor workers and 15.9% of private indoor workers aged under 18 at entry into sex work (CSOM, 2007).

The Christchurch branch of NZPC reported that, based on figures from outreach workers and YCD, there are no more people used in under age prostitution now than there were before the PRA came into force (NZPC, 2007). In addition, NZPC outreach workers have observed that young people often hang around in groups, only some of whom are involved in prostitution. Simply counting the number of young people seen on the streets may lead to an overestimation of the number of people used in under age prostitution.

Comment

The Committee notes that subjective estimates of the number of people used in street-based under age prostitution may be influenced by the visibility of young people on the streets. In reality many of the young people seen on the streets are not involved in under age prostitution, but are minders, friends or hangers-on of people who are providing commercial sexual services (under age or otherwise), or just ‘hanging around’.

³⁶ Entry into the sex industry may have been either pre or post law reform.

7.6 Reasons for Under Age Involvement in Prostitution

There are multiple reasons why people become involved in the sex industry. While some young people will enter the sex industry for reasons similar to those of sex workers aged over 18, some reasons may be specifically related to the age and vulnerability of a young person. Not all under age people enter the industry for the reasons outlined below. Likewise, not all young people faced with similar challenges will become involved in under age prostitution.

The *Protecting our Innocence* report (Ministry of Justice, 2002) notes that some children or young people who are used in prostitution may still be living with parents or caregivers, others may be in residential care and others may be homeless. Their entry into the sex industry may be caused by homelessness, family breakdown, the influence of others, abuse (sexual, physical and psychological), poverty, drug and/or alcohol abuse, educational underachievement, or unemployment.

Participants in the CSOM survey who started working in the sex industry prior to the age of 18 years were significantly more likely than sex workers who started aged over 18 to report that they could not get an unemployment benefit or parental financial support (35% as opposed to 9.5%) (CSOM, 2007).

I found out I could survive that way, 'cause I was so young when I started. I was too young for the dole, I had no experience for a job...Um 14. It just happened by itself. It just, you know, it just all unfolded by itself.

(Paul, Private, Male, Auckland, CSOM, 2007)

Without money or adequate accommodation and support, some young people may become involved in prostitution to support themselves. A lack of support may also mean that young people may exchange sex for safety, accommodation, food, clothing or drugs, rather than money. The authors of the CSOM study highlighted homelessness and the lack of emergency accommodation, particularly for young women, as contributing factors to under age involvement in prostitution.³⁷

The CSOM study authors also noted the young people in their study spoke of the need to survive and make money, and their inability to gain financial support through either their parents or the government. The Independent Youth Benefit (IYB) was criticised as being insufficient to meet their needs, and the requirement that young people attend training courses to be eligible for the benefit was considered a deterrent to accessing the IYB. It was also noted many of the young people came onto the streets when they were too young to receive the IYB.

When I was 14 I started living on the streets, and then I thought, oh, you know, I can't support myself any other way apart from, you know, giving out my body.

(Sally, Street, Female, Christchurch, CSOM, 2007)

The *Protecting our Innocence* (Ministry of Justice, 2002) report noted that transgender youth may be especially vulnerable to entering the sex industry. Reactions to their gender and sexuality from family or peers may leave young transgender people alone and unsupported. The levels of discrimination experienced by young transgender people while in education, when trying to find

³⁷ Gillian Abel and Lisa Fitzgerald provided the Committee with information and comment additional to the CSOM study. They highlighted the link between young peoples' entry into the sex industry, and the lack of support (particularly emergency accommodation) and the unavailability of alternative employment or support services, experienced by some young people.

accommodation, get a job and access health services generally results in them being among the most vulnerable and marginalised young people in society.

The study *The Involvement of Children in Commercial Sexual Activity* study showed that many under age people became involved in prostitution because they knew someone who was already involved in the sex industry. Almost half of the study's respondents stated that a female friend or older female suggested sex work (Saphira and Herbert, 2004). The CSOM study also found many young people were introduced to sex work by friends.

Well um at the time I wasn't receiving any income, so um one of my friends offered to take me, you know, offered me, there was a way for me to make some money. So um yeah, she took me to the street and that's how I found out how to make money so I could survive.

(Toni, Street, Female, Wellington, CSOM, 2007)

Participants in the CJRC *Key Informant Interviews* were divided on what message young people took from the passage of the PRA. Some participants reported that young people thought the decriminalisation of prostitution meant those involved were no longer doing anything wrong. Agencies who provided support services for youth noted that if young people felt they were 'not doing anything wrong', it made it easier to assist them. The fact that young people did not feel themselves to be criminals was also viewed positively. The CSOM study (2007) found that few survey participants reported entering sex work because it was not against the law; the financial benefits and flexible hours were the reasons most often cited.

Comment

The Committee does not consider the PRA has made prostitution an attractive occupation for young people. The number of young people in crisis or lacking other means of support who become involved in prostitution to survive is outweighed by those young people in similar situations who do not. Nevertheless, the involvement of an under age person in prostitution adds to, rather than alleviates, the problems they face. All measures should be taken to divert under age people from entering the sex industry as a means of survival.

Many of the reasons that young people enter the sex industry are also reasons for remaining in the industry and barriers to exiting it. The Committee considers helping vulnerable young people access benefits, accommodation and other support should be predicated on the need of the young person, not whether they are involved in, or at risk of involvement in, prostitution.

7.7 Harm Done

The Committee recognises that there are many negative consequences for people under the age of 18 who are involved in the sex industry. These consequences include physical, psychological and emotional harm, and negative social consequences such as ostracism and social stigma.

The ECPAT New Zealand report *Speaking For Ourselves* (2007) provided a forum for under age people used in prostitution to talk about their experiences. The experiences of the 13 young people interviewed for the report included histories of family violence, sexual abuse and neglect, as well as violence, rape and drug or alcohol misuse while working in the sex industry.

ECPAT New Zealand also notes that many under age people used in prostitution attend school sporadically, or not at all. This results in longer-term consequences, including reduced

educational and employment opportunities. Truancy also means that young people are even more isolated from mainstream support, and therefore more vulnerable.

7.8 Prosecutions and Convictions

7.8.1 Difference Between the Crimes Act Offence and the PRA Offences

Prior to the PRA, section 149A of the Crimes Act 1961 (which came into force on 4 April 2001) dealt with the use of under age people in prostitution. Under section 149A any client involved in an act of prostitution with a person under the age of 18 was liable to imprisonment for a maximum of 5 years. Section 149A(2) allowed a defence if the person charged believed on reasonable grounds that the under age person was over the age of 18 years.

There were only four convictions under section 149A of Crimes Act - a conviction in *Police v McKay* in 2002 and three further convictions against a single offender in *Police v A* in 2004, in conjunction with the first conviction under the PRA (under section 22(2), being a client of a person under 18 years).³⁸

The PRA increased the maximum penalty relating to the use of under age people in prostitution from five years to seven years. In addition, the PRA removed the defence of ‘reasonable belief’. Other jurisdictions, such as Victoria, Australia, have retained a defence of reasonable belief for offences relating to under age prostitution.³⁹

The removal of the defence of ‘reasonable belief’ left it unclear whether the offences under sections 20 - 22 of the PRA were offences of ‘absolute liability’ or ‘strict liability’. An absolute liability offence means that if the offence is established, there is no defence at all for the defendant. A strict liability offence means that there is a defence for a defendant who took all steps to avoid offending and can establish a total absence of fault.

This uncertainty was addressed by Judge Walker in *R v Prendeville and Campbell*, who stated that the offences in sections 20 - 22 are strict liability offences. This interpretation means that a defendant who has made all checks reasonably available for a young person who has the appearance of being over 18 years of age may have a defence of total absence of fault. The Committee endorses the interpretation adopted by Judge Walker, and believes the offences in sections 20 - 22 should be strict liability offences.

7.8.2 Charges Under Sections 20 - 22 of the PRA

As at 31 March 2008, a total of 92 charges have been laid under sections 20 - 22 of the PRA. Table 20 provides data on the outcome of disposed charges and the number of active charges.⁴⁰

³⁸ *Police v McKay*, Christchurch District Court, Judge Sommerville, 28 January 2002. *Police v A*, Christchurch High Court, Panckhurst J, 20 May 2004.

³⁹ The Prostitution Control Act 1994 (Victoria), sections 5(3)(b), 6(4)(b), 7(3)(b) and 11(3)(b).

⁴⁰ The term ‘disposed’ refers to charges which have resulted in an acquittal or conviction, or have been withdrawn, dismissed, discharged or otherwise not proved. Charges that have not been disposed remain ‘active’.

Table 20 Numbers of Charges Brought Under Sections 20 - 22 of the PRA, by Outcome and Offence, 27 June 2003 – 31 March 2008⁴¹

Outcome of Disposed Charges									
	All	All disposed charges	Convicted	Dismissed	Discharged	Withdrawn	Acquitted	Other not proved	All Active charges
Offence									
Assist <18 to provide sexual services (s20)	31	26	14	4	0	7	1	0	5
Receive earnings from use of <18 (s21)	24	17	3	4	0	6	0	4	7
Contract for sex with <18 (s22)	37	32	17	3	1	6	0	5	5
All	92	75	34	11	1	19	1	9	17

It is possible that where an offence relating to under age prostitution has occurred and the victim is aged under 16 years, the offender may have been charged with an offence under the Crimes Act 1961. For example, in *R v Woodhouse* the offender was convicted of indecent assault on a 14 year old used in under age prostitution and was sentenced to 5 years imprisonment.⁴² The data in Table 20 may therefore not represent the totality of offending relating to under age prostitution.

Table 21 provides a breakdown of the location of the District Courts where charges have been disposed.

⁴¹ Notes: 1) Source: Ministry of Justice.

2) The outcome 'other not proved' includes charges where: there was a stay of proceedings; the person was found to be under disability or was acquitted on account of insanity and an order was made under section 115 of the Criminal Justice Act 1985; or the person was found unfit to stand trial or was acquitted on account of insanity and an order was made under sections 24 or 25 of the Criminal Procedure (Mentally Impaired Persons) Act 2003.

⁴² *R v Woodhouse*, Christchurch District Court, Judge Erber, 31 March 2006.

Table 21 Number of Disposed Charges Brought Under Sections 20-22 of the PRA by District Court, 27 June 2003 – 31 March 2008

	Offence			
	Assist <18 to Provide Sexual Services (s20)	Receive Earnings From Use of <18 (s21)	Contract for Sex with <18 (s22)	All
District Court location				
Auckland	1	1	0	2
Christchurch	13	8	10	31
Dunedin	0	0	2	2
Invercargill	3	0	4	7
Manukau	1	0	1	2
Palmerston Nth	0	0	3	3
Wellington	8	8	12	28
All	26	17	32	75

Comment

It is interesting to note how few charges have been disposed in Manukau District Court, although there are numerous reports that under age people are being used in prostitution on the streets of Manukau city. Information from the Ministry of Justice indicates the majority of convictions under sections 20 - 22 have not been in relation to the use of under age persons in street-based prostitution. The Committee hopes Police operations, such as that carried out in Manukau in January 2008 (discussed below) will be repeated in Manukau and elsewhere where under age people are used in street-based prostitution.

The discretion or motivation of individual officers may lead to greater number of arrests in one region. As such, the Committee notes that the table above is not necessarily indicative of the true extent of the problem in one region as compared with others (for example, the numbers disposed of in Wellington as compared to Auckland).

7.9 Sentences Under Sections 20 - 23 of the PRA

To date, the highest sentence imposed under section 23 of the PRA is two years' imprisonment, which is considerably less than the maximum penalty of seven years imprisonment. Sentences imposed to date include fines, supervision, community work, home detention and imprisonment.

Of the cases where sentencing notes are available, judges have commented on the protective nature of the PRA and the vulnerability of victims of under age prostitution offences. Judges have also commented on the need for deterrent sentences for offending of this nature. However, in respect of the offender, mitigating factors such as personal and medical circumstances, guilty pleas, no previous offending and remorse have been taken into account in

sentencing. A convicted charge may result in more than one sentence (e.g. a conviction may result in both community work and supervision being imposed); thus the number of imposed sentences shown in Table 22 may be larger than the number of convictions shown in Table 20.

Table 22 Sentence Types Imposed for Convicted Charges Laid Under Sections 20 - 22 of the PRA, by Offence, 27 June 2003 to 31 March 2008

Sentence Type							
	Custodial	Community work	Supervision	Monetary	Conviction and discharge	New 2007 sentences *	All
Offence							
Assist <18 to provide sexual services (s20)	4	10	0	1	0	2	17
Receive earnings from use of <18 (s21)	1	2	0	0	1	2	6
Contract for sex with <18 (s22)	6	8	2	1	0	3	20
All	11	20	2	2	1	7	43

* *Home detention as a sentence in its own right, community detention and intensive supervision*

Table 23 Custodial Sentences Imposed Under Sections 20-22 of the PRA, by Case, 27 June 2003 to 30 November 2007

Case	Offence(s)	Sentence
Antolick v R, Christchurch HC, (20 May 2004) Panckhurst J	Section 22 (also 3 charges under s149A of Crimes Act)	2 years (Reduced on appeal from 3 years, because the majority of the charges were laid under the Crimes Act with a maximum penalty of 5 yrs)
R v Gillanders, Christchurch DC, (3 march 2005) Judge Erber	Section 20 Section 21	21 months
R v Barnett, Christchurch DC, (19 July 2006) Judge Abbot	Section 22 Section 22 (attempted)	3 months (A further 1 year was imposed for offences relating to child pornography)

Comment

The Committee recognises the complexity of sentencing offenders. Because judges are required to take into account specific features of individual cases, as well as reflect the gravity and totality of the offending, sentences imposed to date under the PRA have not approached the maximum available. Sentences closer to the maximum penalty may be appropriate in future cases. The Committee believes that the penalty of seven years' imprisonment adequately reflects the seriousness of the use of under age persons in prostitution.

7.10 Role of Police

Police officers may request, but have no powers to require, age identification documentation from a person they suspect to be an under age person providing commercial sexual services. Police reported that this makes it difficult to proactively protect young people who are involved, or at risk of being involved, in under age prostitution (NZ Police, 2007).

Police also reported that investigation into suspected employment of under age workers in brothels or small owner-operated brothels has been more limited since the enactment of the PRA. This is because:

- Police now have no right of entry into brothels or other premises,⁴³
- Brothel owners are not required to maintain a record of the age identification of sex workers or provide it to Police.

Police officers are therefore reliant on information from informants or complaints being laid, and assign priority to their response according to the nature of the information received and other demands facing frontline staff at the time.

Police reported difficulties in bringing prosecutions relating to the use of under age people in prostitution. Police officers have difficulty determining when they should intervene if a potentially under age person is seen to meet up with a potential client. Both parties may deny intent, and Police reject waiting until an offence has occurred in order to be able to charge the client.

In addition, the prosecution is reliant on under age people giving evidence in Court as witnesses. Under age people may not wish to co-operate with a prosecution as they wish to continue providing commercial sexual services. It is also important to note that under age people may not often see themselves as victims and will therefore not make a complaint.

Police reported that if officers believe that an under age person is being used in prostitution, they can use section 48 of the Children, Young Persons and Their Families (CYPF) Act 1989 to remove the young person from the situation.⁴⁴ However, under the CYPF Act, a young person is defined as being aged between 14 and 16 years. This means that Police cannot remove 17 year olds, as they fall outside the scope of the CYPF Act.

⁴³ Under section 30 of the PRA, Police may obtain a warrant to enter any premises if they have good cause to suspect that an offence under sections 23 or 34 has or is likely to be committed, or to prevent an offence occurring.

⁴⁴ Section 48 of the CYPF Act applies where a child or young person is found to be unaccompanied by a parent or guardian in a situation where his or her physical or mental health is being, or is likely to be impaired. In this situation, a member of Police may, with the consent of the child or young person, deliver him or her into the custody of a parent or guardian; or if a parent or guardian cannot be located, or the child or young person does not consent to being returned to a parent or guardian, the child or young person may be delivered to a social worker.

Police raised the possibility of making it an offence to be an under age prostitute would be a possible solution to the difficulties outlined above. This would enable Police to obtain age identification of suspected workers and remove those under the age of 18. However, Police recognised the risks associated with the criminalisation of young people, and that such a move would be counter to the intent of the PRA to decriminalise prostitution and its recognition of under age people used in prostitution as the victims of an offence.

In January 2008, Police carried out an operation in Manukau which resulted in the arrest of 25 people. Two people were charged with being a client of a person under 18 years, and one for sexual connection with a person under 16 years. Several other people were detected in relation to the use of under age people in prostitution, but there was insufficient evidence to prosecute.

Approximately 16 young people were removed from the streets and either returned to their parents or placed in the care of Child Youth and Family Services (CYFS). However, Police reported being unable to remove some young people because they were aged 17.

Police reported difficulty in obtaining sufficient evidence against clients, particularly in the absence of an admission, or a complaint on behalf of the victim. The Police Association (2008) recommend amending the PRA to include a 'low level' offence provision for under age people involved in prostitution. Such a provision, the Association argues, would assist Police to remove vulnerable young people (particularly 17 year olds) from the streets.

In relation to street-based under age prostitution, the NZPC does not believe that increased arrests of clients by Police are an appropriate solution. The NZPC argue that increased arrests will merely drive young people somewhere less visible (and consequently less safe) and will not significantly decrease demand (CJRC, 2007). Young people removed from the streets by Police may return as soon as they are able. Many of the reasons young people are on the streets in the first place relate to dysfunctional or unsafe family environments.

Comment

The Committee acknowledges concerns regarding the enforcement of provisions to prohibit the use of under age people. This concern extends beyond the proof of age and includes difficulty in proving that a commercial sexual transaction has occurred, or may be about to occur. The Committee recognises the difficulties faced by Police in bringing prosecutions under the PRA and is encouraged by the increase in prosecutions and convictions since the implementation of the Act. However, the Committee believes that Police must maintain a proactive role in preventing under age people being used in prostitution. The Committee considers that apprehension of clients attempting to procure under age people must be given greater priority. Police action should be directed at offending actions, and not at the victim.

The Committee is encouraged by operations such as that carried out by Police in Manukau in January 2008. Despite Police concerns regarding the enforceability of sections 20 - 23 it is clear that action can and is being taken by Police. However, the Committee believes a consistent approach is required, rather than one-off operations.

The Committee believes powers available to Police under the CYPF Act are sufficient to safeguard young people under the age of consent (under 16 years). The proposed amendments to raise the upper age of the Act to include 17 year olds will further enable Police to protect young people defined as under age under the PRA (under 18 years).⁴⁵ The Committee does not

⁴⁵ For further discussion of the proposed amendments to the Children Young Persons and their Families Act, see page 112.

support recriminalising under age people involved in prostitution, or extending Police powers to demand age identification of young people suspected of being involved in prostitution.

The Committee also recognises that simply removing young people from the streets and delivering them to their parents will not prevent their continued involvement in prostitution, or other harmful behaviours. Once identified, at risk young people require ongoing support provided by social service agencies.

7.11 Social Support for Young People Involved in Under Age Prostitution

7.11.1 Non-Governmental Social Support

There are a small number of community-based organisations that provide support and advice to under age people being used in, or at risk of being used in, prostitution. These organisations offer services such as:

- residential care;
- a non-threatening point of contact for at-risk young people;
- health and safety information and facilitating health services for people used in under age prostitution;
- assisting young people find employment opportunities away from the sex industry; and
- providing courses (including life skills courses).

There is a paucity of specialist youth services in this area, which is partly due to the difficulty of sustaining these services in the long term without adequate or continuing funding. A particular gap in services is a lack of residential care and emergency housing. As noted above, homelessness and poverty are key factors for many young people who become involved in prostitution in order to survive.

7.11.2 Government Programmes

The Ministry of Youth Development contracts with 47 providers who provide around 128 programmes mainly for vulnerable young people, many of whom are considered at risk of negative outcomes (including under age prostitution). These providers are required to report to the Ministry about the outcomes of each programme.⁴⁶

The Ministry of Social Development has initiated a pilot programme in Auckland for people aged 15 - 17 who are in State care. The programme provides a suite of services designed to support young people to independence. The programme does not have a specific aim of preventing the use of under age people in prostitution. However, components of the programme address some of the factors that may lead to vulnerable young people providing commercial sexual services. Specifically, support is provided to get young people into safe and affordable accommodation, and to access benefits such as the Special Needs Grant to set up a flat. Young people are also assigned a personal adviser who provides a continuity of support throughout the transition period and beyond.

The Under age Prostitution Governance Group was established by the Counties-Manukau branch of Child, Youth and Family Services (CYFS), Ministry of Social Development, in April

⁴⁶ For more information about programme requirements, see www.myd.govt.nz.

2006. The Governance group grew out of the Under Age Prostitution Forum that was established by Auckland CYFS in 1999. The members of the Governance Group and Forum are interested stakeholders, including representatives from CYFS, Police and the Human Rights Commission and the NGO sector. In 2006, the Governance Group planned to develop an issues paper which, once agreed on by the organisations and individuals involved, would be presented to central government. This paper is still in draft form.

Comment

The Committee is disappointed by the lack of action from the Under Age Prostitution Governance Group and the wider Forum. The Governance Group needs to develop practical plans to address under age involvement in prostitution. Effective and ongoing collaboration between the relevant organisations, individuals and agencies is vital.

7.12 Options

7.12.1 Amending the PRA

As stated earlier, one of the aims of the PRA is to prohibit the use of people under 18 years of age in commercial sexual services. However, in its current form, the PRA cannot in itself prevent or address the causes of under age prostitution. The Committee has therefore considered whether sections 20 - 23 are adequate and whether legislative amendment is required.

Police has requested the Committee consider an amendment to the PRA that would require brothel operators to obtain and retain age identification documentation. This would place the onus on brothel operators to check and confirm the age of sex workers they employ. Operators would be required to produce evidence of sex workers' age-identification documentation if requested by Police. Participants in the CJRC *Key Informant Interviews* (2007) considered the PRA has made brothel operators more aware of the penalties for employing under age people. Consequently, most operators are now very cautious and ask for age identification.

The Committee notes the concerns of NZPC that sex workers may fear information retained by brothel operators could be used against them or resurface at a later time in their lives. The Committee believes legal safeguards around employee privacy can be applied in the sex industry. However, the Committee is also cognisant that a stigma remains attached to involvement in the sex industry. Threats of 'outing' sex workers to their friends and families have been used by unscrupulous brothel operators as a means to control and exploit sex workers. Therefore, the privacy and anonymity of sex workers must be considered in any approaches to confirm a sex worker's age. The stigma of involvement in the sex industry can have lasting effects and is one of the harms associated with under age involvement.

Police has also requested the Committee consider an amendment that gives Police the power to require age identification documentation from a person they suspect to be under 18 years of age and is providing commercial sexual services. The Committee has considered this issue carefully and on balance has come to the view that Police should not have this power. To give Police this power would contradict the premise that under age people providing commercial sexual services are not committing an offence, but rather are victims.

Police is of the view that it would be advantageous to include a new clause in s23 of the Prostitution Reform Act to exempt police officers from the offences when they are acting in the course of their duties. Examples of this have been implemented in the liquor context with

controlled purchase operations involving minors.⁴⁷ The Committee considers such an exemption may be best achieved via amendment to the care and protection provisions of the CYPF Act 1989. Police could therefore be exempt from prosecution in circumstances not limited to the investigation of the use of under age people in prostitution.

The Committee concludes that sections 20 - 23 of the PRA are adequate. The Committee believes amendment of the PRA is therefore unnecessary and in any case would not prevent under age people being used in street-based prostitution.

7.12.2 Amending the Children, Young Persons and Their Families Act 1989

Section 14 of the CYPF Act defines a child or young person in need of care or protection. Included in that definition are children or young people who are behaving in a manner that is, or is likely to be, harmful to their physical, mental, or emotional well-being and that the child's or young person's parents or guardians are unable or unwilling to control (section 14(2)). This definition is relevant to young people used in under age prostitution, given their vulnerability and the negative consequences attached to their involvement in the sex industry.

Police may use section 48 of the CYPF Act to remove young people from harmful situations. However, the definition of young person under the CYPF Act does not include 17 year olds. There is also no agency to refer young people to if they are 17 years old. In addition, the Committee believes 17 year olds leaving CYFS care are particularly vulnerable to entering the sex industry because of this lack of support.

Comment

The Ministry of Social Development gave the Committee the opportunity to provide comment on the review of the CYPF Act in May 2007. The Committee recommended amending section 48 to include 17 year olds, as this would increase the level of protection for under age people used in prostitution and bring the CYPF Act into line with the PRA and the United Nations Convention on the Rights of the Child. An amendment Bill was introduced in the House on 3 December 2007. The Bill contains a proposal to raise the upper age of the Act to include 17 year olds. The Bill also contains proposals to support young peoples' transition from care to independence, and to improve collaboration between agencies. The Committee supports these proposed changes to the CYPF Act.

7.12.3 Changes to the Independent Youth Benefit

The CSOM report shows that sex workers who started working in the sex industry prior to the age of 18 years were significantly more likely to report that they could not get a government benefit or parental financial support. Without money or adequate accommodation and support, some young people become involved in under age prostitution to support themselves.

The main benefit available to 16 and 17 year olds is the Independent Youth Benefit (IYB). The IYB is available to those who are looking for work, training for work, in secondary education, or can not work due to sickness, injury, disability or pregnancy, and are not able to rely on parental support. To be eligible for this benefit there needs to be a breakdown in the relationship between the young person and his or her family.⁴⁸

⁴⁷ See section 162(5) of the Sale of Liquor Act 1989

⁴⁸ For more information on the Independent Youth Benefit and other benefits available to young people, see www.workandincome.govt.nz.

In the CJRC report *Key Informant Interviews* (2007), some NGOs also expressed concern that young people are experiencing difficulty in obtaining financial support. Specifically, that the application process for the IYB can be difficult and lengthy and it can be traumatic for some young people to have to provide evidence of a breakdown in family relations in order to be eligible for the IYB. Anecdotal evidence from some NGOs suggests that young people leaving CYFS care have not received help in applying for the IYB.

Changes came into effect in April 2007 to make it easier for young people transitioning from CYFS care to access the IYB.⁴⁹ However, no changes are planned to make it easier for young people who have not been in CYFS care to access the IYB. The Ministry of Social Development has stated that it is 'not aware of any problems accessing the IYB that may have precipitated young people becoming involved in prostitution'.

Comment

The Committee accepts the view that young people are experiencing difficulty with the application process for the IYB. The Committee recommends that the Ministry of Social Development develop strategies to assist at risk young people to more easily complete the application process for financial support that they may be entitled to, such as the IYB.

7.12.4 Social Support and a Multi-Agency Approach

Legislation alone is not sufficient to prevent young people's involvement in the sex industry. The Committee recognises that intervention is needed both in the early stages of a child or young person's vulnerability and when a child or young person is actively engaged in under age prostitution.

It is important that the social support provided to under age people is 'young person centred'. This is particularly important in relation to helping young people to exit the industry. These young people may wish to assert their independence and may reject interventions from parents, carers or practitioners. Therefore the process of engagement with young people needs to be flexible and focused on the needs of the individual.

The Committee believes that NGOs and government-funded community based groups are best placed to engage with at risk young people. There are several NGOs and agencies working with at risk young people. However, these organisations need to identify those young people who are, or are at risk of, being used in prostitution and be more responsive to their needs.

The Committee is aware of the successful multi-agency collaboration between the Christchurch branch of NZPC, the Christchurch Central Police and YCD. These agencies work together to provide support, safety and information to street-based sex workers and vulnerable young people. This commitment to collaboration has improved information sharing between agencies, and between the agencies and street-based workers. This in turn has improved the safety of street-based workers and provided Police with useful information about criminal activity in general.

Police also regards a multi-agency approach to the enforcement of under age prostitution as being the preferred approach in principle. There will be regional differences both in the nature of the issues involved and the resources available. Regions also vary in terms of the support

⁴⁹ For example, young people transitioning from CYFS care do not have to establish that there has been a breakdown in the relationship with their foster carer.

services available. In areas where there are no or few specialised support services, the scope for a multi-agency approach is more limited.

Comment

The Committee recommends that the collaborative multi-agency approach taken by agencies in Christchurch be adopted throughout New Zealand. Police is also encouraged to foster positive contact between officers and at risk young people, street-based sex workers and their advocates. The Committee endorses the work of those organisations working with youth and street-based workers. The Committee also recommends increased funding for community-based groups, to be delivered via the Ministry for Youth Development and the Ministry of Social Development. The Committee acknowledges that regional differences will, to some extent, dictate the scope and nature of the services provided. However, all available services should be utilised where at risk young people are identified, whether or not they are specifically at risk of involvement in prostitution.

Recommendations

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 young people.

The Ministry for Youth Development and the Ministry of Social Development deliver increased funding to community-based organisations working with at risk youth.

The Committee supports the amendment of section 48 of the Children, Young Persons and Their Families Act 1989, 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.

8 Street-Based Sex Workers

8.1 Introduction

The PRA is intended to provide protections for all sex workers, irrespective of the sector of the industry in which they work. In terms of the purpose of the PRA, street-based sex workers have much to gain. Under the previous criminalised regime, street workers were more likely to be arrested for soliciting than indoor workers. Street workers are both more vulnerable to violence and more likely to experience pressure to use unsafe sex practices than other sex workers. Street-based sex work is also the most visible part of the sex industry, attracting sometimes strong reactions from some communities. Although not specifically tasked to do so, the Committee believes it is important to separately consider the operation of the PRA in terms of its impact on street-based sex workers.

At the time of the law reform the hope was expressed that decriminalising brothel keeping would encourage street-based sex workers to work indoors. The CSOM study investigated the degree of movement between sectors of the sex industry. The CSOM study found that, even post decriminalisation, there is little movement between the street and indoor managed sectors of the industry. There are multiple reasons for working from the street. The Committee acknowledges that working on the streets is a choice some sex workers make, even when alternative venues are available.

8.1.2 Historical Perspective

Street-based sex work is not a new phenomenon, nor are public and political concerns about street working a recent development. The earliest New Zealand legislation to address prostitution was the Vagrancy Act 1866. This legislation was based on the English Vagrancy Act 1824 ‘which could be invoked against a prostitute wandering the public street or in any place of public resort and behaving in a riotous or indecent manner’ (Jordan, 2005). The 1866 Act was repealed by the Police Offences Act 1884, which prohibited ‘common prostitutes’ propositioning passers-by.

In 1869, the Contagious Diseases Act allowed any woman suspected of being a ‘common prostitute’ to be detained and subject to forcible medical examination. No such action was taken against the woman’s clients. This uneven approach to prostitution, which penalised the workers but ignored the clients, continued (although in less extreme forms) under subsequent New Zealand legislation.⁵⁰

Under section 26 of the Summary Offences Act 1981, a person was liable to a fine not exceeding \$200 for soliciting in a public place. Case law established that massage parlours were public places; therefore, both indoor and street-based sex workers were liable to prosecution under the Summary Offences Act 1981.

Street-based prostitution was a feature of urban life in many centres during the nineteenth century. For several decades however, street-based sex workers have only been seen in Auckland, Wellington and Christchurch. During the 1990s, street prostitution areas developed in Manukau City (Manukau City Council, 2006).

⁵⁰ Such as the Crimes Act 1908 and the Police Offences Act 1927, and the Acts that replaced them, the Crimes Act 1961 and the Summary Offences Act 1981, respectively.

8.2 The Nature of Street-Based Sex Work

8.2.1 Numbers

Any estimate of the size of any sector of the sex industry must be viewed with caution due to the often temporary and sporadic nature of people's involvement. In addition, street-based workers who are with a client, or not working, while head counts are conducted may not be included, making accurate assessment of numbers of workers difficult.

In the Committee's first report, the number of sex workers in New Zealand was estimated to be 5,932 of which 11% (roughly 652) were street-based. Although the data collection methods had many limitations, this represented the best estimate of numbers immediately prior to decriminalisation (PLRC, 2005). Two further counts of street-based sex workers were undertaken in 2006 and 2007 by researchers from the CSOM. Difficulty arises when trying to compare data collected in relation to illegal activity (soliciting) and data collected when such offences no longer exist.

In 2006 (and again in 2007) in Wellington and Christchurch sex workers known to be currently working, but not observed on the nights counting took place, were included in the final estimates. Some of the sex workers included were very rarely seen on the street. Wellington and Christchurch adapted the method suggested by the CSOM to include known sex workers. The same method was not employed in Auckland; therefore the 2006 figures must be treated as an under-estimation of the number of street-based workers in this region.

Research undertaken by the CSOM in February and March 2006 found 253 street-based sex workers in New Zealand, representing 11% of the sex industry as a whole. In Auckland 106⁵¹ street workers were counted, (making up 7% of the industry in Auckland) in Wellington 47 street workers were counted (representing 13% of the Wellington sex industry) and in Christchurch 100 were recorded (representing 26% of sex workers in Christchurch). The CSOM found no street-based workers in the other two centres included in the research (Hawke's Bay and Nelson).

Between June and October 2007, CSOM carried out another estimation of street-based sex workers in the five centres. Again, none were found to be working in the Hawke's Bay or Nelson regions. For this estimate, outreach workers in Auckland developed a list of street workers known to be working, similar to the lists used in Wellington and Christchurch, to estimate the numbers of street-based workers. In Christchurch 121 street-based workers were counted and in Wellington 44 street-based sex workers were counted. In Auckland, 230 street workers were known to be working. Not all workers on the lists are seen on the streets every week. For example, in Christchurch, during a two week period of observation in June 2007, between 70 and 77 workers were noted as working (CSOM, 2007).

The different methods used to estimate numbers of sex workers in Auckland in 2006 and 2007 may explain the large increase in the Auckland figures. However, Auckland outreach workers also reported an 'influx of sex workers on the streets in the six to eight months prior to June 2007'. Of the 230 workers, 20 were very rarely seen on the street (CSOM, 2007).

Streetreach is a non-governmental organisation that provides support for street-based sex workers in Auckland and Manukau cities. Streetreach believes there has been an overall increase in the number of street-based sex workers in the Auckland region since decriminalisation (Streetreach, 2007)

⁵¹ This figure is known to be an under-estimation.

In Christchurch, some residents in and around the street prostitution area report an increase in the number of sex workers since the passage of the PRA (St Lukes Body Corporate, 2007). Information received from other residents from the same area indicates that sex workers are now seen working during daylight hours, as well as at night (Residents of Manchester, Peterborough and Salisbury Street corners, 2007). NZPC outreach workers in Christchurch confirm some sex workers now prefer to work during the day because it is safer. NZPC and YCD in Christchurch considered that the number of street-based workers has remained stable since the enactment of the PRA. However, there are slight seasonal variations with more sex workers presenting on the streets as the weather improves (PLRC, 2006).

The Salvation Army operates street vans and community services for street-based sex workers in Auckland, Manukau and Christchurch cities. The Salvation Army noted that the PRA has not reduced the number of people working on the street. The Salvation Army argues the number of sex workers on the streets has not reduced because the PRA has not improved or addressed the causal factors underlying prostitution (Salvation Army, 2007).

Comment

The Committee acknowledges that opinions differ about the effect of decriminalisation on the number of sex workers. The perception that there has been an increase in the number of street-based sex workers since the enactment of the PRA may be due to sex workers working more visibly in some areas. This does not necessarily represent greater numbers overall. 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’.

8.3 Reasons for Working on the Streets

Street workers are a heterogeneous population, with multiple reasons for working from the street. The popular perception that street-based sex workers are all drug dependant ‘lost souls’ denies them their individuality and agency. It is true that some street workers have drug and alcohol dependencies and lives that are in a state of crisis. However, there are other sex workers who choose to work from the streets for reasons other than desperation or a lack of alternatives.

The literature review undertaken by CJRC identified a combination of ‘push’ and ‘pull’ factors influencing people’s entry into sex work in general. Push factors include abuse, family dysfunction and breakdown in care giving, exclusion from school, homelessness and a lack of money. ‘Pull factors’ include perceptions of excitement and glamour, encouragement from others, flexible work hours and significantly more money than other jobs available to the worker (CJRC, 2007).

8.3.1 A Matter of Choice or Circumstance

The Salvation Army identifies the main reasons for involvement in prostitution (street or otherwise) as poverty and social disadvantage, including unemployment, homelessness, drug and alcohol misuse, and a history of family dysfunction and/or sexual abuse. It also cites the pressure exerted by those who rely on the sex workers’ earnings, whether they are a ‘pimp’, or the worker’s own dependent child. The Salvation Army rejects the suggestion that a person would freely choose sex work (Salvation Army, 2007).

The CSOM study found that, for street workers, the main reason for starting sex work was financial, but this was by no means the only reason. Some sex workers choose to work on the streets because they can charge more for their services and retain more of their earnings than brothel-based workers. Sex workers who are street-based can set their own hours, and work only when and if they need to.

I'd just, if I remember correctly, it was like coming up towards Christmas and I lost my job. And I'd just been and got a personal loan for a car and blah-de-blah-de-blah, and it was just, yeah, right on Christmas, and yeah, it just, I needed a lot of money fast and this was the only way to do it. Simple.

(Maureen, Street, Female, Auckland, CSOM, 2007)

Street-based workers have independence in the same way that private workers do, but also receive the type of social contact and peer support available in a brothel environment. The CSOM study found that street-based sex workers reported that 'all of their friends were in the industry' as one reason for continuing to work in the sex industry.

Um I think it's the um independence. Like you know your ability – well I'm talking from a street perspective – it's your ability to choose. I mean you don't have to hop in a car with a guy. You don't have to do a job. You can tell him to piss off you know. Um it's the um adventure, I suppose, the excitement of not knowing what's going to happen that night. It's a bit of that. Um there's the money, which um can be good...I mean you work how long you want to work. I mean you can go out do a job, pop around to the bar, have a dance, you know, um go and see someone, have a chat and go back to work or something, you know. I mean it's just lots of freedom, yeah.

(Dora, Street, Transgender, Auckland, CSOM, 2007)

The CSOM study also found that street workers report they thought sex workers 'looked like they were fun to be with' and that 'the work looked exciting and glamorous' as reasons for entry into the industry. This was particularly true for male and transgender sex workers who also reported the influence of friends, and exploring their sexuality, as other reasons for starting working. The CSOM study also found that 50.8% of street-based workers reported they enjoyed the sex as a reason for continuing to work in the sex industry.

The CJRC literature review (2007) identified the economic advantage of sex work to be a significant reason for staying in the industry. The review states 'the conclusion drawn is that sex work can be seen as a positive choice for some sex workers, preferable to other alternatives and offering a conduit to social mobility, such as home ownership'.

The flexible hours of street-based sex work may be attractive to people whose lives are in a state of chaos and who find it difficult to cope with regular working hours. CSOM found that 45.1% of street-based workers cited support for drug or alcohol use as a reason for staying in the sex industry, as opposed to just 10.7% of managed and 13.5% of private workers.

8.3.2 Demographic Factors

The CSOM study found that street-based sex workers are more likely than other sex workers to be Māori or Pasifika. Sex workers who are transgender are more likely to work on the streets. Street-based workers are also more likely than sex workers in other sectors to have started sex work under the age of 16 years. They are less likely to be in any other paid employment, to have attained a tertiary education or to be currently studying. The socio-economic and background characteristics of street-based workers tend to be less advantaged than others in the sex industry.

The CSOM study also found that street-based workers were significantly more likely than other workers to report not knowing what else to do (other than sex work), not knowing how to leave the industry, and not knowing who to ask for help to leave.

While the majority of street workers are female, a significant proportion are transgender. The CSOM interviews found that, for transgender people, the camaraderie and support offered by other sex workers was a significant reason to remain working. Sex work also provided some transgender people with validation of their gender. Transgender people find it almost impossible to be employed in the brothel sector and report fewer employment alternatives to sex work. The Human Rights Commission's *Inquiry into Discrimination Experienced by Transgender People* (2008) notes that 'the career options of some trans people are limited by discrimination.' Submitters to the Inquiry also noted that stereotypes about transgender peoples' engagement in sex work can also be a barrier to their obtaining other employment.

Comment

For people whose employment options may be limited, sex work, and particularly street-based sex work, can offer a quick means of achieving financial gains beyond what they would otherwise be able to achieve in the 'straight' workforce. Sex work does not require education or qualifications or references. Street-based sex work is an industry in which workers are 'hired' on the basis of their personal marketing skills and availability alone.

8.4 Impact of the PRA on Street-Based Sex Workers

Decriminalisation has meant that sex workers and their clients no longer have to be as clandestine about their activities. This means negotiations can take place at a less hurried pace, and may be within sight of other workers and members of the public.⁵² The Committee was told that street-based workers are now seen during daylight hours as well as after dark, that they work in better lit areas, and are more 'up-front' about working.

Street-based sex workers reported that it is now easier to refuse a client - 61.9% of street-based workers in the CSOM study reported that it was now easier to refuse to 'do' a client since the law reform (CSOM, 2007).

8.4.1 Role of Police

The Committee received information from several sources indicating improved relations with Police since the law reform. Participants in the CJRC key informant interviews believed the PRA has changed the role of Police from prosecutors, to protectors. The transition is most apparent in Christchurch; with work still needing to be done by Police in other regions. NZPC and YCD (Youth Cultural Development) praised Christchurch Police for their efforts to make contact with the city's street-based workers, particularly after the murders of two street-based workers in 2005.

Christchurch Police consider the PRA has made co-operation, and the good relations between street-based workers and frontline officers, possible. Street-based workers offer Police useful information about activity on the streets, while Police provide information about potential offenders who may pose a risk to street workers (PLRC, 2006).

⁵² Unhurried negotiations with clients allow sex workers to determine whether clients are drunk, abusive or in any other way dangerous.

Street-based participants in the CSOM survey were more likely to report getting information about bad clients from Police (26.2%) than either managed (6.8%), or private indoor workers (9.4%). Few of the sex workers who CSOM interviewed, regardless of the sector they worked in, said they had reported any of the incidents of violence or crimes against them to the Police. Street-based workers were generally less likely to do so than either managed or private indoor workers. Participants in the CJRC key informant interviews cited the reaction of some officers as a barrier to reporting offences committed against sex workers; although there was also a sense that reports of violence against sex workers would now be taken seriously. Christchurch Police also acknowledge some sex workers may still be reluctant to lay complaints, making it difficult to prosecute offenders (PLRC, 2006).

Comment

The Committee recognises that a key function of the Police is the apprehension of offenders. Liaison with the sex industry must be considered in the context of other Police priorities, with the allocation of resources to investigating serious offences taking precedence. In Christchurch, the murders of two street-based sex workers in 2005 provided a reason for Police to work more closely with street-based sex workers. The Committee commends Christchurch Police for maintaining links forged at that time. Street workers are exposed to a higher level of risk than sex workers in other sectors of the industry. Police can play a part in reducing their vulnerability by building relationships of trust between frontline officers, street workers and their advocates. The necessary attitudinal shift, from prosecution to protection, is not universal and may still be dependent on individual officers. Such changes take time and need the commitment from senior Police to become entrenched. As demonstrated in Christchurch, closer ties with street-based sex workers and their advocates can be advantageous to all parties.

8.5 Is There a Problem?

8.5.1 The 'Problem' of Street Work for Sex Workers

The CSOM study found that street-based sex workers are significantly more likely than other sex workers to have experienced violence, threats of violence, to have been raped, had money stolen from them or been held somewhere against their will. Clients are the usual perpetrators of offences against street-based workers.

The CSOM study found that street workers were more likely than other workers to report refusing a client in the last 12 months. This may reflect the autonomy of street-based workers, but may also be indicative of the type of clients who prefer street-based to brothel-based prostitution. The CSOM study also found that street-based sex workers reported receiving requests for sex without a condom more often than workers in other sectors of the industry.

8.5.2 Christchurch Murders

Two Christchurch street-based sex workers were murdered in separate incidents in 2005. In both cases, the offenders were found and subsequently sentenced to life imprisonment (one with preventive detention).

Suzie Sutherland was murdered on 16 April 2005. A year later, one of Suzie's clients on the night of her death, Jule Patrick Burns, was found guilty of her murder. Burns's defence argued the nature of Suzie's occupation was inherently dangerous, and therefore she (and other street-based sex workers) should not be considered a particularly vulnerable group; the implication

being they had chosen their occupation regardless of the risks. Justice Hansen rejected this argument.

The second murder was of a 24 year old woman, whose body was found in the Avon River in December.⁵³ Peter Waihape, one of her clients on the night of her death, was convicted of her murder.

In determining whether the particular vulnerability of the victim warranted the imposition of a minimum period of imprisonment of 17 years or more⁵⁴, Justice Chisholm cited the decision of Justice Hansen in the Burns case. Justice Chisholm noted that, 'He [Justice Hansen] accepted that the nature of the occupation of a prostitute working at night makes a prostitute specially vulnerable and could see no reason why prostitutes should not receive the same protection as other people in vulnerable positions' (R v Peter Steven Waihape (High Court, Christchurch, 17 August 2006) at [21]).

8.5.3 Drugs and Alcohol

The CSOM study found that street workers are more likely than other workers to accept payment in the form of drugs for the provision of sexual services. However, there are regional and demographic variations: 71.8% of Auckland street workers interviewed said they would accept drugs instead of money, compared with 45.3% of street workers in Wellington and only 37% of Christchurch street workers. Male and transgender street workers were also more likely to exchange sex for drugs and alcohol than female workers.

8.5.4 Access to Health Services

The CSOM study found that street-based workers were more likely to have contact with a mental health practitioner, counsellor or social worker than other sex workers; but they were less likely to have contact with health professionals or have their own doctor.

Although it was hoped decriminalisation would make it easier for sex workers to access health services, the CSOM study found that there were no significant differences in access to health services between Christchurch participants in 1999 and 2006. It should be noted, however, that very few participants in the CSOM survey (3.7%), and none of the participants in the qualitative interviews reported not going for sexual health check ups. The majority of those surveyed who did not have check ups were street-based workers.

8.5.5 Social Marginalisation

Street-based sex workers are the most at risk sex workers, but are also vulnerable members of society for reasons other than their involvement in sex work. In the CSOM study, street workers were significantly more likely to report accepting food or a place to stay in lieu of money for sex work, indicating higher levels of poverty and homelessness amongst street workers than other sex workers.

⁵³ At the trial of Peter Waihape, Justice Chisholm permanently suppressed the name of the victim.

⁵⁴ Section 104(g) Sentencing Act 2002

8.6 Objections to Street-Based Sex Work

Community concerns are generally only reported in relation to the Christchurch and Manukau street prostitution areas. The Wellington and central Auckland areas may be more generally tolerated because they are long established and geographically stable. Also, central Auckland and Wellington apartment dwellers have moved in knowing the character of the area, including the presence of street-based prostitution. While Wellington's main street-based area is close to several bars, it does not attract much foot traffic from surrounding bars and clubs, and is removed from the main nightlife area of Courtenay Place.

This is in contrast to Christchurch and Manukau where street prostitution scenes have developed or shifted into traditionally residential areas. Christchurch has seen the gradual movement of street-based workers into more residential areas in response to pressure from bars and brothels at the city end of the relevant streets. Some people leaving the bars in Christchurch walk through the section of the street used by sex workers and their clients in order to get home. The Manukau sites developed in the early 1990s.

Another difference is the age of the street-based workers in each area. Research by CSOM found that street-based workers in Christchurch tended to be younger (and report starting in the sex industry younger) than in other areas. Manukau City has a high proportion of young people, with 41% of the city's population under the age of 24 (Manukau City Council, 2007).⁵⁵ Thus there are more likely to be young people on the streets of Manukau, only a small minority of whom will be involved in prostitution.

8.6.1 Social Nuisance

The Committee received information from residents of the Christchurch area used by street-based sex workers indicating that it is not the sex workers per se that are the cause of the disruptive behaviour witnessed. Often, it is the negative attention from members of the public, some of whom drive by specifically to shout at and harass the workers standing on the street that is the focus of complaints by residents and other members of the community (St Lukes Close Body Corporate, 2007). Residents and NZPC outreach workers also report 'hoons' throwing eggs at sex workers. In addition, where street workers come into direct contact with late night bar patrons there is often conflict. Abuse and harassment of street-based sex workers by drunken members of the public is common.

Submitters to the Manukau City Council (Control of Street Prostitution) Bill tended to make generalised statements about the 'negative image' of street prostitution, rather than specific complaints about the behaviour of the sex workers (Manukau City Council, 2007). However, there are reports of some street-based sex workers propositioning members of the public, and being aggressive, disruptive and noisy.

The issues in Manakau City are not limited to prostitution. The Committee heard from Police that family violence and issues stemming from abuse of alcohol are major problems in the area, as well as other impacts of urban decay and lack of investment.

Objections levelled at street-based prostitution often focus on offensive litter purportedly left by the sex workers. A common complaint is that used condoms, excrement and other bodily waste is left in the street, in shop doorways and car parks, or on private property. Police in Manukau and Christchurch told the Committee that the local liquor licensing arrangements and alcohol consumption are significant contributors to offensive litter.

⁵⁵ Based on 2001 census data.

8.6.2 Means Available to Deal with Social Nuisance

Several legislative means exist to deal with social nuisance. The Summary Offences Act 1981 contains provisions prohibiting disorderly and offensive behaviour, including intimidation and obstructing public streets.⁵⁶ Under the Litter Act 1979, fines can be imposed of up to \$7,500 for persons depositing potentially dangerous or infectious materials, which could include used condoms. Also, as discussed in chapter nine, territorial authorities have bylaw making powers enabling the regulation of ‘trading in public places’.

NZPC outreach workers report encouraging street workers to use the available rubbish bins as well as collecting and disposing of used condoms themselves. Other litter such as bottles and fast food wrappers cannot be exclusively connected to street-based sex workers or their clients. A clean and well maintained environment may encourage appropriate disposal of litter.

In its report on the Manukau Bill, the Local Government and Environment Committee (Local Government and Environment Committee) (2006) noted;

It is our belief, and this view is endorsed by various submitters, that the behaviour of sex workers on the streets is generally regulated more effectively by their peers and outreach groups working with them than by legislation. We believe that it is important for nongovernmental organisations doing this work to be adequately funded and subject to proper accountability to produce the best results. We hope that if sex workers respect the areas where they conduct street work, then residents will be more tolerant of their presence.

8.7 Options

8.7.1 Local Government Initiatives

Some territorial authorities have introduced bylaws containing prohibitions on soliciting in, or within view of, a public place.⁵⁷ These prohibitions may be contrary to the intent of the PRA but have not yet been tested in court. Information provided by these councils indicates that bylaws have often been enacted more as a pre-emptive measure than in relation to specific or ongoing complaints. Of the four bylaws that prohibit public or street-based soliciting, all have been enacted in areas with no history of street-based sex work.

In 2001, Wellington City Council initiated a street ambassadors scheme called ‘Walk Wise’. The Council-funded programme is contracted to a private security company. Fifteen full-time equivalent Walk Wise officers patrol the city’s streets on an almost 24 hour basis. Although they are described as eyes and ears on the streets, Walk Wise do not have an enforcement role. Rather, their job is to build relationships in the community. They have made strong links with NZPC, Police and social agencies in the city as well as local sex workers, homeless and other street-based people.

Christchurch City Council provides funding for the Street Youth Work Project run by YCD. The project works with young people on the streets of Christchurch, particularly those under the

⁵⁶ Summary Offences Act 1981, ss3 (Disorderly behaviour), 4 (Offensive behaviour of language), 5A (Disorderly assembly), 7 (Fighting in a public place), 21 (Intimidation), 22 (Obstructing public way), 27 (Indecent exposure), 32 (Excreting in a public place).

⁵⁷ Bylaws prohibiting soliciting are discussed in chapter 9

age of 18, who are working as sex workers or are at risk of involvement in sex work. The project is run in conjunction with NZPC, and has the support of Christchurch Police.

Manukau City Council reports putting in place initiatives to reduce problems that have been associated with street-based prostitution in the city. The Council commissioned a review of the commercial sex industry in Manukau and promoted networking between affected parties. The Council has also adopted Crime Prevention Through Environmental Design (CPTED) guidelines and installed monitored CCTV cameras in some areas (Manukau City Council, 2007). In addition to these non-legislative initiatives, in 2006 the Manukau City Council introduced a Local Bill to control street prostitution.

The Manukau Bill proposed to make it an offence to solicit in a public place anywhere in Manukau, and targeted both sex workers and clients. The Bill was voted down on several grounds; including that it essentially recriminalised soliciting in only one region of the country, and raised the possibility of the gradual revocation of the PRA if similar prohibitions were adopted by other local authorities (Local Government and Environment Committee, 2006).

The Local Government and Environment Committee considered that targeting street-based workers was not an appropriate or effective response to the disruptive behaviour experienced on the streets of Manukau, the causes of which were varied. It concluded that ‘initiatives that have the support of the local community, sex workers and their advocates, outreach workers, social agencies and the police have a better chance of long-term success than a legislated solution’. For further discussion of the Manukau Bill, see chapter nine.

8.8 International Experience

The CJRC literature review (*International approaches to decriminalisation or legalisation of prostitution*) (CJRC,2007) identified a variety of approaches to street-based sex work around the world. Some approaches aim to abolish prostitution (street-based or otherwise) by criminalising the sex workers or their clients, or both (for example prohibiting soliciting and targeting ‘kerb crawlers’ (discussed below)). In jurisdictions that criminalise prostitution, there may be confusion about its legal status because of a tolerant climate. Prostitution is known by enforcement agencies to exist, but prosecutions are rare. Approaches may be adopted that aim to manage street prostitution and ameliorate the social nuisance associated with it. This approach is based on a pragmatic recognition that street-based sex work, and the harms associated with it, are not prevented under a criminalised regime.

The CJRC literature review also identified countries where prostitution is not criminal, but is heavily regulated. Regulations often relate to where prostitution can and cannot occur, with street-based prostitution either prohibited or restricted to certain areas. Some approaches, such as the Dutch tolerance zones (discussed below) are designed to manage, rather than prohibit street-based prostitution.

Some approaches include strategies to help sex workers work safer, whereas others are designed to assist sex workers to get off the streets or leave the industry altogether; some feature a combination of both approaches. Approaches which aim to limit the danger to sex workers, while also lessening any negative effects of street-based prostitution on the community, include safe-house brothels (discussed below) and tolerance zones.

8.8.1 **British Approaches: Targeting Kerb-Crawlers and Anti-Social Behaviour Orders**

The British Government's strategy is to 'disrupt street sex markets to significantly reduce the numbers involved in street prostitution' (Home Office, 2006, [1]). The abolitionist approach adopted in Britain includes targeting 'kerb crawlers' and banning street-based sex workers from certain areas. Measures to target 'kerb crawlers' (clients driving slowly looking for street workers) under the Sexual Offences Act 1985 are based on a demand reduction ethos. Penalties for kerb crawling include warning letters, re-education schemes as an alternative to prosecution, prosecution, fines and the 'naming and shaming' of offenders. Since 2004, British law has included the option of disqualification from driving for those convicted of kerb crawling. Information from the Home Office indicates that this legislation is widely regarded as an effective deterrent. However, its effectiveness is dependent on consistent enforcement (Home Office, 2006, [2]).

In 1999, the British government introduced new powers for Police and local authorities to tackle anti-social behaviour. Anti-Social Behaviour Orders (ASBOs) can be issued to low level offenders and those causing nuisance and disturbance. ASBOs ban people from continuing the anti-social behaviour, associating with certain people and being in a specified area. ASBOs are issued for a minimum of two years and are civil orders, not criminal penalties; although breaching an ASBO is a criminal offence punishable by a fine or up to five years in prison (Home Office, [3]).

There are widely divergent views on the effectiveness of ASBOs with respect to sex workers, and there has been no formal review of their effectiveness. However, the British Home Office has recognised that issuing ASBOs to sex workers may prevent them from accessing support services. ASBOs may also compromise the safety of street-based sex workers who can no longer work in the area from which they are prohibited (Home Office, 2006, [2]). While an area might temporarily be cleared of street prostitution through the use of ASBOs, the sex workers concerned are likely to move to isolated and rundown areas where they are placed at even greater risk of violent attack and even murder.

British NGOs have criticised the use of ASBOs in regards to street-based prostitution arguing their use endangered women and did not prevent kerb crawlers. ASBOs were considered of little benefit to those trying to exit prostitution. Rather than providing a way to assess drug and other rehabilitation programmes, ASBOs made it harder for women to access support services (Poppy Project, 2005). It was also noted breaching an ASBO may result in imprisonment (Scottish Government, 2005). However, because ASBOs are served under civil law there does not need to be proof that the actual street workers themselves, as opposed to the kerb crawlers or others, are causing the disturbance for which an ASBO may be issued (Poppy Project, 2005).

8.8.2 **The Swedish Model: Prohibition of Purchase**

In Sweden the Law Prohibiting the Purchase of Sexual Services was passed in 1999. The Swedish law is unusual in that it targets the clients of sex workers, rather than the sex workers. In Sweden, sex workers are seen as victims rather than perpetrators of criminal activity. The Swedish model is based on an understanding of gender relations in which prostitution is regarded as violence against women and an extension of male domination. The strategy is part of the Swedish Government's policy to redress all gender inequality in Sweden. The legislation was amended in 2005 to extend to cases where payment has been promised or made by someone else in order to capture third parties.

The Swedish law has been attributed with reducing the number of street-based sex workers in Stockholm by up to 50% (Ekberg, 2004). The apparent success of the Swedish approach has been widely reported and is often cited by advocates for similar law reform. However, the claims about the law's success have also been severely criticised for being politically motivated, and for being based on poorly researched and erroneous data (Clausen, 2007).

The National Board of Health and Welfare has been assigned by the Swedish government to gather information on and to monitor the extent and development of prostitution, and of social measures applied at the local level. To date, the Board has completed two reports. The first study found that the number of women engaged in prostitution declined between 1998 and 1999, which was the period when the new law against purchasing sex went into effect. The second report noted that there have been no significant changes in the extent of prostitution since 1999 (National Board of Health and Welfare, 2004).

Swedish sex workers dispute reports of significantly reduced numbers and point out that the claims are based on inaccurate government estimates of the numbers of street-based sex workers prior to and after the passage of the Act. Sex workers also report they have been forced to travel to neighbouring countries where there have been negative impacts (such as increased competition and decreased prices) on the sex industry as a result (Sambo, 2001).

The Swedish Act has been severely criticised by sex workers who argue that they are disadvantaged and exposed to risk because of the need to protect their clients from prosecution. As a result of the Act, it is argued prostitution has gone underground, and negotiating times have decreased significantly (Lund, 2007). Sex workers also contest the Police assertion that the Act has diminished the incidence of trafficking, and report an increased presence of organised crime syndicates and youth involved in sex work (Ministry of Justice, 2006).

8.8.3 Safe-House Brothels in Sydney

Safe-house brothels provide a venue for street-based sex workers to take clients and thus lessen the likelihood of their having sex in cars or other public places. This reduces the danger to sex workers, as well as the problems and annoyance caused by sexual acts taking place in inappropriate places.

Safe-house brothels are privately run and charge around \$13 for the rent of a room. They provide free condoms, clean syringes, and safe sex information, but do not provide health care or social services. Safe house brothels are not designed to assist sex workers to exit the industry.

The Committee heard reports of a 'safe-house' that was established in Christchurch but closed after a short time. The Christchurch safe house was not well managed and became a nexus for criminal behaviour (YCD, 2006). One of the differences between the Christchurch and Sydney operations may be the level of involvement of the territorial authority. In New South Wales, all brothels (including safe-house brothels) are regulated and licensed by the local council under the Disorderly Houses Amendment Act 1995. There is no similar requirement for councils in New Zealand to be involved in the regulation or running of commercial sex businesses.

8.8.4 Dutch Tolerance Zones

A tolerance or managed zone is generally an area in which no arrests are made for prostitution-related offences, although the enforcement of other laws (for example, drug offences) continues. Tolerance zones have been established in a number of Dutch cities (such as Utrecht) to reconcile the pragmatic acceptance of street prostitution as a feature of urban life with the need to combat any disturbances caused by its presence. Prostitution was legalised in the Netherlands in 2000 after many years of being unofficially tolerated. Street prostitution is, however, still illegal. The establishment of tolerance zones in the Netherlands is an attempt to stem the flow of illegally trafficked women into the sex industry and to break the links with organised crime.⁵⁸

Utrecht's tolerance zone is cited as a success because it is well policed and has ongoing funding and support from the local territorial authority. Health and social services for the sex workers are provided, as well as a dedicated police team and regular cleaning of the zone by council workers (Campbell and O'Neill, 2006). The Utrecht tolerance zone was set up after consultation with Police, sex workers and community groups. The project is overseen by a board which includes sex workers. Sex workers are also among the volunteers who work in the 'Living Room' which provides facilities for sex workers, such as a place to relax while not working, food and drinks, condoms and clean syringes.⁵⁹

Comment

The Committee considers all forms of criminalisation run the risk of driving prostitution underground and producing negative health and safety consequences for sex workers.

The Committee supports aspects of initiatives such as safe-house brothels in Sydney, and Dutch tolerance zones, but considers neither are wholly appropriate models for the New Zealand street-based industry.

The Committee concludes the effects of street-based prostitution should 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).

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.

8.9 Support Strategies

The Committee acknowledges the valuable work done by the NGO sector to support street-based sex workers. Various approaches are taken, some of which aim to assist sex workers get off the streets and/or exit the industry all together. Best practice principles include programmes which provide sex workers with choices and facilitate sex workers freely deciding when and how they stop working.

Streetreach, NZPC and Te Aronga Hou Ināianeī all provide street workers with support, and safe sex information. NZPC and Te Aronga Hou Ināianeī also provide condoms. The Salvation

⁵⁸ Trafficking and organised crime are not significant features of the sex industry in New Zealand.

⁵⁹ A high proportion of street-based sex workers in the Netherlands have been identified as intravenous drug users. Similar intravenous drug use is not a significant factor among New Zealand street-based sex workers.

Army and Streetreach aim to assist sex workers to leave the industry. Streetreach offers life skills courses, budgeting advice and advocacy support when a worker is dealing with other social agencies. For further discussion of exiting, see chapter five.

8.10 Why Legislation is Not the Answer

Prohibition and a criminalised regime prior to the PRA did not prevent street soliciting occurring, nor was street-based prostitution controlled in any constructive way by its illegal status. The argument that prohibiting street-based sex work, while allowing indoor prostitution, would ‘solve’ street prostitution is not supported either by history or by the research undertaken by CSOM. As noted above, the CSOM study found very little movement from the street to other sectors of the sex industry. An amendment to the PRA to prohibit street-based sex work would create legal and illegal sectors of the industry; the negative effect of which would be most strongly felt by street-based sex workers.

It has been suggested that street-based sex workers should be required to obtain authorisation from local authorities under rules governing trading in public places.

Regulation necessitates some form of enforcement and penalties for non-compliance. In its commentary on the Manukau Bill, the Local Government and Environment Committee (2006) noted imposing fines on street-based sex workers may ‘create a perverse incentive for offenders to continue prostitution work’ in order to pay the fine.

In addition, imposing fines and other criminal sanctions on street-based sex workers is contrary to the intent of the PRA, and is inappropriate in a decriminalised context

Any attempts to regulate street prostitution in the current climate may run the risk of driving street prostitution further underground. Prostitution is emerging from a long history of being an illegal, and therefore clandestine, activity. In addition, there is still a significant social stigma associated with involvement in street-based prostitution (for both workers and clients).

Street-based workers are likely to be merely displaced to another location to avoid detection by regulating authorities. In addition, negotiation times with clients will be decreased, thus increasing the dangers faced by street-based sex workers. Displacement also makes it harder for support services to access and assist sex workers.

Comment

The Committee considers legislation and regulation are not the best ways to deal with the harms associated with street-based sex work. Abolitionist policies and the ‘come down hard’ approach do not have the effect people want. Such approaches may increase the dangers faced by street-based sex workers, and displace any problems experienced by local communities onto other communities.

Decriminalisation did not create the problems experienced by communities in which street prostitution takes place, nor the harm experienced by sex workers. Similarly, decriminalisation has not solved all the problems associated with street-based sex work, nor can it be expected to.

Decriminalisation has removed the fear of being prosecuted previously felt by many sex workers (particularly the more visible street-based sex workers). The result is that sex workers now feel more able to work during the day and in well lit, safer places. Some street-based sex workers also feel Police now take reports of violence against sex workers more seriously. Therefore,

decriminalisation, via the PRA, is partially achieving one of its purposes in terms of promoting the welfare and occupational health and safety of sex workers. However, the Committee recognises decriminalising prostitution alone cannot fully achieve this aim.

8.11 PLRC Position on Street-Based Sex Work

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.

Therefore, the Committee considers street-based sex workers should be encouraged to either move to a safer, indoor setting, or leave sex work altogether. At the very least, street workers should be supported to work as safely as possible and in a manner that causes the least disruption to local residents. The Committee also acknowledges that street work is a choice some sex workers make even though alternative venues are available.

The Committee recommends that the present street-based prostitution areas are managed in a way that will minimise the potential for disturbance to local residents and provide as much support and protection for street-based workers as possible. Many local authorities have development plans or community plans that talk about ensuring the safety of the community. Sex workers are also members of the community.

The Committee recognises that, historically, legislative approaches aimed at eradicating street-based sex work have not worked. In addition, the Committee considers any form of prohibition (whether targeting workers or clients) increases the vulnerability of sex workers, and adds to the harms associated with street-based sex work.

Solutions proposed for the management of street-based prostitution must have the support of all parties affected. Consultation processes must include sex workers and their advocates, as well as local authorities, Police, and NGOs. There must be accurate identification of the problem to be addressed; thorough investigation into the causes of the problem; and a clear idea of the outcomes sought, as well as an understanding of the needs of the target group and how best to meet those needs.

8.11.1 Street Workers Should be Supported to Work Safely and with Consideration for Local Communities

Street-based sex workers should be encouraged to work in areas where they will be safe, while at the same time cause the least disturbance to residents. To this end, the Committee recommends greater support for NGOs and outreach workers providing information and guidance to sex workers about safe work practices and alternatives to street work. Outreach workers should also continue to encourage the appropriate disposal of used condoms by sex workers and their clients.

Peer pressure from other workers is a valuable tool which should be harnessed to manage disruptive or unsafe behaviour by street-based sex workers. Peer education also plays an important role in providing street-based sex workers with information about how to work safely, and should be fostered within street worker communities.

Police are encouraged to have a presence on the streets and to build positive relations with the local sex workers, and with NGOs that work with sex workers. The Committee also considers consistent enforcement of laws prohibiting littering, offensive behaviour and intimidation may ameliorate the social nuisance being experienced in and around street prostitution areas.

Territorial authorities have a responsibility to work with other agencies to address problems associated with street work, including safety for sex workers. Meaningful consultation with community groups, NGOs, Police and sex workers and their advocates is necessary. The use of CPTED guidelines and other urban design initiatives will enhance sex workers' safety, and ameliorate any social nuisance being experienced.

8.11.2 Street Workers Should be Encouraged to Stop Working on the Streets

The Committee considers street-based workers should be assisted to seek work in brothels or privately, or to leave the sex industry. Brothel operators are encouraged to provide employment for transgender and other street-based workers. Support for those who wish to leave the sex industry should be tailored to meet the needs of the individual sex worker. NGOs should be adequately funded to carry out this work.

8.11.3 Legislative Approaches to Problems Associated with Street-Based Sex Work Should be Avoided

The Committee discourages TAs from making bylaws for the purpose of prohibiting street-based sex work, or that are so restrictive as to prohibit the operation of SOOBs. Approaches that aim to manage street-based prostitution should not contain defacto prohibitions on aspects of street work such as specific zoning or times of work. Existing legislative means should be employed to discourage disorderly behaviour by all community members, not just street-based sex workers.

8.11.4 Local Government Should Adopt Practical Solutions

The Committee recommends TAs adopt CPTED guidelines with a view to improving the safety of all community members, including street-based sex workers.

TAs should invest in street cleaning, lighting, and city ambassador schemes. In addition, territorial authorities should provide adequate rubbish bins and toilet facilities in and around street prostitution areas.

Auckland, Manukau, Wellington and Christchurch City Councils should continue to work in consultation with NZPC, other NGOs, sex workers and communities to find answers to specific problems, and encourage community ownership of street prostitution areas.

Recommendations

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.

9 Response of Territorial Authorities to the PRA

9.1 Introduction

The PRA recognises that some communities may be sensitive to exposure to the sex industry, and provides a mechanism to deal with those sensitivities. The PRA does this by granting powers to territorial authorities (TAs) in sections 12 - 15 of the Act. TAs have powers to regulate or prohibit signage advertising commercial sexual services, and to regulate the location of brothels (including, importantly, SOOBs). Some use of these powers has been controversial, and has led to legal action being taken against three TAs. This chapter examines the relationship between the sex industry and local government, and concludes that, while there have been difficulties, the current powers available to TAs are sufficient.

9.2 Local Government

9.2.1 Introduction to Local Government in New Zealand

Central government delegates law making functions to local authorities so they can deal with local issues. While local government has been given significant regulatory authority, it is itself controlled by central government legislation, and in particular the Local Government Act 2002 (the LGA). Section 10 of the LGA provides that the purpose of local government is:

- a) to enable democratic local decision-making and action by, and on behalf of, communities; and
- b) to promote the social, economic, environmental, and cultural well-being of communities, in the present and for the future.

Local government in New Zealand is conducted by three types of body: regional authorities, territorial authorities, and unitary councils. There are 12 regional authorities and 73 TAs. The TAs are comprised of 16 city councils and 57 district councils. Four of the TAs are unitary councils. In New Zealand, a unitary council is a TA that also takes on the role of a regional authority. The four unitary councils are Gisborne District Council, Nelson City Council, Tasman District Council and Marlborough District Council.

Traditionally, local government has had responsibility for regulating services such as roads, sewerage, reserves and parks, and water supply. Under the LGA's predecessor, the Local Government Act 1974, the powers and duties of local government were prescribed in considerable detail⁶⁰. By contrast, the LGA adopts an enabling approach, which has provided local authorities with wider powers. Section 3 of the LGA provides that the Act's purpose is 'to provide for democratic and effective local government that recognises the diversity of New Zealand communities'.

The promotion of local autonomy and the enhancement of local democracy through public participation are very important local government objectives. One of the ways in which local government exercises this delegated power is through the creation of bylaws. The process for

⁶⁰ Much of the Local Government Act 1974 was repealed by the LGA; the provisions that remain in force are generally not relevant to the regulation of the sex industry.

making bylaws is laid out in the LGA, and includes an obligation that the TA undertake extensive consultation with its community and other affected parties before making any new bylaws. Local government is also given powers under more than 100 other Acts, including the Local Electoral Act 2001, the Resource Management Act 1991 (RMA), and the Building Act 2004.

The RMA allows for the establishment of district plans by TAs. A district plan provides a set of rules as to what types of activity can be carried out in which areas that are under the TA's authority. A district plan may set out residential, commercial and industrial zones, plus mixtures and gradations of these (e.g. residential/light commercial) and define what sorts of businesses and buildings may be situated in each zone. In order to engage in an activity in an area where that activity is not sanctioned by a district plan, a resource consent must be sought under the RMA. This system was to have repercussions for the location of brothels after the enactment of the PRA.

In passing the PRA, Parliament made it clear that it was not taking a moral stance on prostitution, but rather was legislating to deal with issues associated with the health and safety of sex workers, and their human rights. However, much of the debate from local communities about the legislation revolved around questions of morality, and was often expressed in terms of strong emotion.

Community consultation by some TAs, notably in Christchurch, Manukau, Auckland and Hamilton, revealed strong opposition to the establishment of brothels, particularly in residential areas. The bylaws that resulted from this consultation attempted to control the location of brothels, as well as regulating signage. Other bylaws have gone further, and prohibit soliciting and touting for brothels or commercial sexual services in a public place. In some cases, the local government's response to community concern was at odds with the aims of Parliament when it decriminalised prostitution.

9.3 Role of Territorial Authorities under the PRA

The PRA gives TAs the power to regulate two aspects of the sex industry: signage advertising commercial sexual services; and the location of brothels. Both powers are provided for by a bylaw making power. The PRA also provides special guidance to TAs when considering resource consents in relation to businesses of prostitution.

Section 12 of the PRA provides that a TA may make bylaws that prohibit or regulate signage that is visible from a public place and advertises commercial sexual services. It may make such bylaws only when satisfied that the signage is likely to cause nuisance or serious offence, or if it is incompatible with the existing character of the area.

Section 13 provides that a bylaw regulating or prohibiting signage may be made under section 12 even if that bylaw is inconsistent with the New Zealand Bill of Rights Act 1990. This provision expressly overrides section 155(3) of the LGA, which provides that bylaws must not be inconsistent with the Bill of Rights Act.

Section 14 provides that TAs can make bylaws to regulate the location of brothels. Section 4 of the PRA provides that a brothel is any premises kept or habitually used for the purposes of prostitution. The definition, therefore, can include SOOBs. This issue has been a sticking point for bylaws that fail to distinguish SOOBs from commercial sexual services businesses when regulating for the location of brothels.

Section 15 provides that, when a TA is considering an application for resource consent under the RMA for a land use relating to a business of prostitution, it must take into account whether the business is likely to cause a nuisance or serious offence, or is incompatible with the existing character or use of the area in which the land is situated. This is in addition to the usual matters the TA must consider under the RMA.

The differences between the regulatory frameworks for signage and location are crucial. Signage can be prohibited, and this can be done despite the fact that it might be inconsistent with a right under the Bill of Rights Act, such as the right to freedom of expression. In contrast, the location of brothels can only be regulated; brothels cannot be prohibited altogether. In addition, rights under the Bill of Rights Act, such as the right to freedom of association, must be respected.

Shortly after the PRA was enacted, Local Government New Zealand (LGNZ), an organisation charged with representing the national interests of all councils in New Zealand, issued *Prostitution Reform Act Guidelines* (the LGNZ Guidelines) for the use of TAs when considering their response to the PRA. This document provided a ‘toolbox’ of options including the use of district plans, bylaws under the PRA and LGA, bylaws under the Health Act 1956 and non-regulatory options. It identified the strengths and weaknesses of the options, and stated that ‘Ultimately it is for each TA to determine the most appropriate and efficient response [to the PRA] given the risks and consequences of adverse effects on the environment and particular sectors of the community’ (Local Government New Zealand, 2003).

9.4 Results of Questionnaire

In early 2007, the Ministry of Justice, on behalf of the Committee sent a questionnaire on the PRA to the 73 TAs in New Zealand. Fifty-seven TAs responded. The questionnaire sought information on: TAs’ responses to the PRA (e.g. did they introduce a new bylaw or amend the district plan); their views on the adequacy of the powers granted to them by the PRA; and the level of community concern/number of complaints about the sex industry in the TAs’ districts.

Forty-three TAs indicated that the enactment of the PRA had prompted them to consider the sex industry in their district. A further 13 TAs responded that they had given the matter no consideration, with one TA failing to answer the question. Fifteen TAs decided that the matter could be managed by their district plan, although six of these opted to notify a change to their district plan as a result of the PRA. Fifteen TAs either promulgated a new bylaw or amended an existing one. The remaining 12 decided nothing needed to be done.

One TA, Wellington City Council, had introduced a bylaw regulating ‘commercial sex premises’ in 2001.⁶¹ Once the PRA was enacted, Wellington City Council took advice from council officers, and decided no further action was necessary. At the time of writing, no new premises have received resource consent for the Courtenay Place precinct.

All 15 bylaws that were promulgated as a result of the enactment of the PRA control signage for brothels, and 13 also control location.

⁶¹ The Commercial Sex Premises Bylaw defined such premises far more broadly than what today are known as brothels but were then called massage parlours, to include adult bookshops, strip clubs and other similar businesses. The bylaw is part of the Council’s Consolidated Bylaw. This bylaw banned ‘commercial sex premises’ from the ‘Courtenay Place Precinct’, which comprises the city’s main nightlife centre, and controlled signage, advertising and touting for commercial sex premises throughout the city. Existing premises in the Courtenay Place Precinct at the time the bylaw was introduced were deemed to be approved, but any new commercial sex premises that wished to establish premises in the Courtenay Place Precinct would have to apply for resource consent.

The questionnaire asked all TAs why they had responded to the PRA in the way they had. Where there has been a lot of TA activity, some TAs (e.g. Christchurch City Council, Manukau City Council) cited high levels of community concern. However, others, such as Grey District Council, did so as a 'precautionary tool', to manage the location of brothels if any should ever be established. At the time of answering the questionnaire, there were still no brothels in the District, as far as the TA was aware.

The most common reason for taking no action was that there was either no perceived sex industry in the TAs area, or a very small, discreet industry.

Twelve councils have defined specific areas within which brothels are permitted to operate. In all cases these areas are located in commercial and industrial zones. Eight of these have included SOOBs in their definition of brothel. Three of these have been challenged in court⁶², with two having their bylaws struck down, largely because of their impact on SOOBs. These cases are discussed later in this chapter.

Of the 53 TAs that responded to a question about the number of complaints they receive about the sex industry, 30 said they had received no complaints. Only 5 had received more than 10 complaints. The most consistent reason for complaints was that a brothel was operating outside a designated zone or in a residential zone. The latter type of complaint was often directed at a SOOB. Not surprisingly, the TAs who had received the most complaints were based in the major cities.

When asked 'Are the provisions in the PRA that allow TAs to make bylaws regulating the location of brothels and signage advertising brothels adequate?', only eight TAs said 'no'. Thirty-eight responded 'yes' and 12 replied that the question did not apply to them. When asked whether TAs' powers to regulate the sex industry should be expanded, only seven responded 'yes'. Four TAs sought greater power to control the location of brothels, particularly to keep them out of residential areas, and two were concerned about their apparent lack of power to control street sex work. A further issue addressed by two TAs was the need to clarify the roles and responsibilities of TAs and health authorities.

Some TAs commented that the LGNZ Guidelines were considered when developing their response to the enactment of the PRA, others noted that they had helped develop the LGNZ Guidelines, and one stated that, in the initial stages of developing its bylaw, the LGNZ Guidelines were still being developed.

Comment

The Committee believes it is significant that many TAs saw no need to respond to the enactment of the PRA, and that some that did were merely being cautious, rather than responding to a real issue. This confirms the findings of other research commissioned by the Committee that the industry is not widely spread around the country, but largely confined to cities and, to a far lesser extent, provincial centres.

Where there has been a lot of TA activity, such as in Manukau City and Christchurch, it is often a response to a wide range of social problems that do not necessarily relate to prostitution. Chapter eight discusses this further.

The Committee is concerned that TAs have attempted to force SOOBs to work in the same area as larger brothels. A SOOB, almost by definition, is run from home, and is therefore unlikely to

⁶² The bylaws promulgated by the Auckland, Christchurch and Hamilton City Councils.

be found in a commercial or industrial zone. Further, locating brothels in industrial and commercial zones often means they are in areas that are not as well lit, and certainly not as populated, as the suburbs. This may place sex workers working from SOOBs 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. This is discussed further later in this chapter.

The Committee notes that a large majority of TAs were satisfied with their regulatory powers under the PRA, and did not see the need for these to be increased. The Committee accepts that the small number of TAs that are dissatisfied with their regulatory powers have genuine concerns. However, there are ways of addressing those concerns other than increasing the powers of TAs to regulate the sex industry. For instance, working with the street-based industry, rather than seeking powers to ban it, is more likely to be effective in the long run. The developing case law on the location of brothels indicates that control over the location of brothels by bylaw is possible, provided the control is not so total as to amount to prohibition⁶³. The Committee opposes any increase in the TAs powers, as sought by the minority of TAs, as the exercise of these powers is unlikely to have the effect of furthering the purpose of the PRA.

The Committee is of the view that TAs would be assisted in ensuring that their responses to the PRA are appropriate in 2008 if LGNZ were to update its PRA Guidelines in the light of the developments since 2003.

9.5 Other Mechanisms Available to Territorial Authorities

9.5.1 The Local Government Act 2002

Section 145 (General bylaw-making power for territorial authorities) of the LGA is as follows:

A territorial authority may make bylaws for its district for 1 or more of the following purposes:

- protecting the public from nuisance:
- protecting, promoting, and maintaining public health and safety:
- minimising the potential for offensive behaviour in public places.

This general bylaw-making power is supported by a specific bylaw-making power in section 146, which provides, amongst other things, that regulations can be made for the regulation of 'trading in public places' (section 146(a)(vi)). Most TAs have very similar general bylaws that control all types of street trade made under this provision⁶⁴. Section 14 of the PRA expressly states that bylaws regarding the location of brothels will be made under section 146 of the LGA, and some TAs have cited the LGA in addition to the PRA as the authority for their prostitution bylaws.

At least seven TAs have established a licensing regime for brothels by way of bylaws under the LGA and the Health Act 1956. Annual licensing fees range from \$200 per annum to \$566 per annum.

⁶³ J Conley v Hamilton City Council, HC Hamilton, Ellen France J, 19 July 2006

⁶⁴ Christchurch City Council has recently considered whether to use a proposed Public Places Bylaw to regulate street-based sex work. Staff advised the Council of various practical issues that would arise with such an approach, particularly regarding enforcement. The Council was advised that staff would report on the issue after the publication of this report.

9.5.2 ‘Soliciting and Touting’

Some TAs have adopted a standard clause in their prostitution bylaws prohibiting ‘soliciting and touting’ for commercial sexual services in public places. ‘Soliciting’ in this context is ‘inviting a person to enter a brothel or other commercial sex premises’ (Grey District Council Commercial Sex Premises Bylaw 2007), rather than soliciting to sell sex oneself, or participating in street sex work. ‘Touting’ is ‘tout[ing] for business or otherwise verbally advertise[s] the business of prostitution or commercial sex premises’ (Rodney District Council General Bylaw: 1998, Chapter 22, Brothels and Commercial Sex Premises). Most TAs who have prohibited soliciting and touting have also prohibited the distribution in a public place of handbills, writings or pictures that advertise, identify or inform the public of any brothel or other commercial sex premises or the availability of commercial sex services.

Such regulations fall outside the regulation-making power of the PRA, and have been made under the LGA. *Bylaws – regulating the sex industry* (Caldwell, 2004), examines the Rotorua District Council Prostitution Bylaw 2003 (amongst others), which prohibits soliciting and touting for brothels. Caldwell concludes that these provisions are *ultra vires* (outside the scope of) the PRA, but is more circumspect as to whether they might be *intra vires* (within the scope of) section 145 of the LGA. Caldwell has even greater concerns about the provision’s susceptibility to challenge as being repugnant to general law and unreasonable. Caldwell is of the view that the prohibitions on touting and written advertising material probably achieve what the councils set out to achieve, and they would be far less susceptible to challenge if they stood alone, rather than being exposed to ‘collateral challenge’ because of the soliciting bylaw.

9.5.3 The Carterton and Queenstown Bylaws

At least two TAs have gone further - Carterton’s Prostitution Bylaw 2007 prohibits any person from soliciting commercial sexual services in any street, road, footpath, road reserve, public place or area within the District Council area, or where the person may be visible from any public place, reserve or area. The Queenstown-Lakes District Council’s Brothel and Prostitution Control Bylaw 2003, as amended by Amendment No 1, 2004, prohibits any person from soliciting (as defined in the terms of the Bylaw) within the Queenstown-Lakes District on or in any street, road, footpath, road reserve or public place or area, or where that person is, or may be visible from any public place, reserve or area.

The bylaws effectively prohibit street sex work in the two districts.⁶⁵ No prosecutions by councils have been taken under these provisions, and they have not been challenged for legality by any potential touts or street workers.

9.5.4 The Resource Management Act 1991

The RMA provides that each TA shall have a district plan covering its district, and that any land use (amongst other things) that would breach a district plan must be the subject of an application for a resource consent. This provides an effective means for TAs to control the location of commercial sexual service businesses, as many TAs noted in responding to the Committee’s questionnaire. Sixteen TAs stated that they would rely on the provisions of their district plans to regulate the location and signage of brothels, with six of those TAs notifying a district plan change in response to the enactment of the PRA.

⁶⁵ Information the Committee received from NZPC indicates that there is no street-based work outside of Auckland, Wellington and Christchurch.

Napier City changed the rules in its district plan in 2005 to restrict brothels from operating in the CBD. Napier City's original proposed plan change would also have prohibited SOOBs from operating in the area, but the Council decided to exempt them after a submission from the local Medical Officer of Health.

9.5.5 The Health Act 1956

Section 23 of the Health Act 1956 provides TAs with broad powers to promote public health. The section provides as follows:

Subject to the provisions of the Act, it is the duty of every TA to improve, promote and protect public health within its district, and for that purpose every TA is empowered and directed to:

- Appoint Environmental Health Officers to perform duties under the Act;
- Regularly inspect the district to see if any nuisances, or any conditions likely to be injurious to the public health or offensive, exist in the district;
- Take steps to abate the nuisance and remove the condition;
- Enforce regulations under the Act;
- Make bylaws under this or any other Act that authorises the making of bylaws for the protection of public health;
- Provide reports to the Medical Officer of Health, as to diseases and sanitary conditions within its district, as the Director General of Health may require from time to time.

Some TAs have cited the Health Act, in conjunction with the PRA and LGA, as authority for the promulgation of bylaws regulating the sex industry. The Manukau City Council's Brothels bylaw, for example, cites the Health Act as its authority, and includes hygiene, ventilation and lighting requirements to protect the public health. Rodney District Council has nearly identical requirements, while Auckland City Council has very similar hygiene requirements, but does not have the ventilation and lighting requirements of the other two councils.

Anecdotal evidence provided to members of the Committee indicates that some brothels in Manukau have applied for brothel certification, but withdrawn their applications when learning of the hygiene and health and safety requirements in the Auckland and Manukau bylaws. This, coupled with the fact that the Auckland bylaw includes an expensive licensing system over and above the PRA certification system, has led some to choose to remain 'massage parlours'.

9.5.6 Non-PRA Bylaws, Other Statutes and Non-Legislative Responses

Some general bylaws can be used to regulate the sex industry. Manawatu District Council, for example, includes provisions on signage for commercial sexual services in a part of its general bylaw headed 'Advertising Signs'. Palmerston North takes the same approach in its "Signs and Use of Public Places Bylaw 2004".

A range of regulatory statutes empower TAs to regulate various activities. TAs have roles under the Sale of Liquor Act 1989 and the Food Act 1981 that will be relevant to the regulation of some brothels. Similarly, if a new brothel is being built, added to or refurbished, TAs have a role as Building Consent Authorities under section 12 of the Building Act 2004.

Some TAs have made non-regulatory responses to the sex industry in its most visible form. These include adopting CPTED principles, placing extra rubbish bins, lighting and toilets in

areas where street work is regularly carried out, initiating ‘street ambassadors’ schemes aimed at fostering relationships in the community and working closely with the sex industry to manage any problems as they arise. Christchurch, Wellington and Manukau City provide examples of these approaches. These responses are described in chapter eight.

Comment

Only the Courts can decide if provisions that prohibit soliciting and touting are valid. However, soliciting or touting for a brothel has never been common practice in New Zealand, and the decriminalisation of the sex industry does not seem to have led to its development. The many TAs that do not have a prohibition on soliciting and touting have not been inundated with the practices, so it seems that bylaws that prohibit such have had little practical effect.

The Committee is concerned about the Carterton and Queenstown bylaws, but recognises that, as there is no history of street-based sex work in Carterton or Queenstown, the true impact of the bylaws is probably negligible.

On the whole, the Committee believes that TAs are using the RMA and district plans responsibly and effectively to regulate the business of prostitution. However, the Committee has concerns about the potential for district plans to be used to effectively prohibit brothels, and particularly SOOBs, and notes that on two occasions the court has found this to be the case.

The Committee has concerns that regulations made under the Health Act and the LGA may place such onerous conditions upon brothels that they choose to remain ‘underground’ and term themselves massage parlours. The imposition of a licensing regime by TAs, with high fees for brothel operators, has the potential to create a two-tier industry that the designers of the relatively inexpensive certification scheme in the PRA were at pains to avoid. As far as the Committee is aware, high licensing fees and restrictive health, safety and hygiene requirements are rare at present, but the Committee wishes to place on the record that these practices have the potential to subvert the intention of the PRA, and create a two-tier system.

As indicated elsewhere, the Committee is pleased to note that most TAs have adopted appropriate non-regulatory approaches to the sex industry, and encourages others to do likewise.

9.6 Local Government’s Approach to Small Owner-Operated Brothels

SOOBs have caused particular consternation to some TAs. Some residents have expressed concerns that the suburbs will be inundated with SOOBs, leading to decreased land values/property valuations, late night noise, littering and a general lowering of the tone of their neighbourhood.

Suspicion has been expressed to the Committee by SOOB workers that complaints are from other brothels/sex workers attempting to harm their competitors. However, the Committee has received no evidence to confirm this.

Comment

SOOBs are not a new phenomenon, and have not caused widespread problems in the past. Most are so discreet that they go unnoticed. A SOOB can consist of a single sex worker working alone, and at the most only four sex workers can operate from a premises to qualify.

There is little evidence that such activity causes disturbance, other than moral indignation, to the community. When complaints regarding suspicions that a neighbour is operating a SOOB are made to a TA, they are generally resolved by discussion between the SOOB, the TA and the complainant.

The Committee notes that, while the PRA clearly contemplates SOOBs' continued existence, some residents, and therefore TAs, have grave reservations about the sex industry operating in the suburbs. The Committee is confident that these fears are largely unfounded, and is hopeful that, in time, this will be agreed to be the case. In the meantime, the Committee sees no reason to amend the PRA to impose tighter controls on the location of SOOBs, notwithstanding calls from some TAs for such amendment.

9.7 Legal Challenges to Bylaws Regulating the Sex Industry

Any bylaw is subject to challenge in the High Court by way of judicial review. A challenge can be brought by any person who has been adversely affected by a bylaw and, at common law, asks the court to find that a TA has: failed to consider relevant matters; considered irrelevant matters; failed to consult or follow statutory procedures; or reached a decision that is so unreasonable no reasonable person could have reached it.

In addition to the common law requirements, New Zealand has established a statutory framework for the challenge of bylaws. This is as follows:

- Section 14 of the Bylaws Act 1910 provides that a bylaw will be invalid if it deals with a matter dealt with by the general law, and is repugnant to that law.
- Section 17 of the Bylaws Act provides that a bylaw is invalid if the decision made about it was unreasonable, as judged by reference to the scope of the bylaw and the impact it will have on the community affected by it.
- Section 17 of the Bylaws Act also provides that a bylaw is invalid if it is *ultra vires*, i.e. it goes beyond the power granted by the primary legislation.
- Section 155(3) of the LGA provides that a bylaw is invalid if it is inconsistent with the New Zealand Bill of Rights Act 1990.

The bylaw making power is therefore limited by scope (to signage and location of brothels), by the common law principles relating to judicial review, and by statutory provisions that reflect those common law principles.

Three bylaws controlling the location of brothels have been challenged at the time of writing. SOOBs lie at the heart of two of the cases, and were discussed in all three.

Willowford Family Trust and Anor v Christchurch City Council (HC Christchurch, Pankhurst J, 29 July 2005)

The Christchurch City Brothels (Location and Signage) Bylaw 2004 restricted brothels to an area in the central business district. This meant that no brothels, including SOOBs, could operate in the suburbs. This issue had been contested during the consultation on, and consideration of, the bylaw, with a Prostitution Reform Sub-Committee (of the City Council) raising the possibility of amending the draft bylaw to allow SOOBs to operate in any business zone. This was rejected by the Council.

Pankhurst J concluded that the bylaw was invalid because of its effect on SOOBs. At paragraph 94, he concluded:

... the practical effect of the bylaw is to deny the existence of SOOBs in the city of Christchurch. In that regard I am unable to accept the contention that any intrusion is minimal, because SOOBs may still be established within the scheduled area, or because work in SOOBs is only one facet of the business of prostitution and need not be accommodated in terms of a local bylaw. The evidence to which I have already referred indicates otherwise. For these reasons I conclude that the location aspect of the bylaw is invalid in relation to its impact upon SOOBs.

Because argument had not been heard on separating out the location aspect of the bylaw from the rest of it, the Judge struck out the whole bylaw. The approach taken by the High Court found favourable academic comment⁶⁶.

J B International v Auckland City Council (HC Auckland, Heath J, 14 March 2006)

The Auckland City Council's Brothels and Commercial Sex Premises Bylaw severely restricted the locations where any brothel could operate. The Court found that the aspect of the bylaw that dealt with the location of brothels was invalid and accordingly struck it down, leaving the rest of the bylaw operational. At paragraph 99, Heath J concluded:

In my view, a bylaw that effectively forbids the operation of a small owner-operated brothel in a suburban home is ultra vires the bylaw making power contained in s. 14 of the Act. It can also be characterised as unreasonable. That is because, contrary to parliament's clear intentions, all brothels (including small owner-operated brothels) are excluded from virtually all areas within the Isthmus (including suburban residential areas where homes may be used as small owner-operated brothels) due to the way in which the location of brothels has been defined.

The Court went on to state 'a Council's bylaw making power must be exercised on legal rather than on moral grounds. And, importantly, there must be a nexus between the policy concern identified and a location from which brothels have been excluded.'⁶⁷

J Conley v Hamilton City Council. (HC Hamilton, Ellen France J, 19 July 2006)

The Hamilton City Council Prostitution Bylaw 2004 creates a 'Permitted Brothel Area'. This area covers 'the CBD and the city's main industrial area'.

The bylaw was challenged on a number of grounds, the strongest of which was that it effectively prohibited SOOBs from operating. The applicant claimed that SOOBs have special features, and are 'a home based industry with their 'natural habitat' being the suburbs'.⁶⁸

The Judge recognised that the PRA acknowledges the existence of SOOBs, and makes provision for them. She then stated 'it does not necessarily follow that small SOOBs have to be provided for in just the way that the applicant and others may prefer.'⁶⁹ She stated that, while the Act recognises that some sex workers will prefer to work in SOOBs, Pankhurst J and Heath J appear

⁶⁶ In *Brothels, Bylaws, Prostitutes and Proportionality* Dean Knight of the Victoria University of Wellington, stated: 'The decision to quash the bylaw as it related to small owner-operated brothels was, in my view, sound, although I would have preferred a clearer distinction to be made as to the basis for this finding.'

⁶⁷ At para 102.

⁶⁸ *J B International v Auckland City Council*.

⁶⁹ *ibid*

to go beyond that when they describe the intention of the Act as recognising SOOBs ‘as a constituent part of the business of prostitution.’⁷⁰

The Judge then examined the facts of the situation and concluded that, while it would be a challenge to find a house in the permitted area that could be used as a brothel, it would not be impossible.⁷¹ She further concluded that there is a difference in fact and degree between this case and the Auckland case, and that she did ‘not accept the evidence shows the Council has prohibited under the guise of regulation.’⁷²

Julie Conley v Hamilton City Council (CA, Hammond, Robertson and Arnold JJ, 28 November 2007)

The plaintiff appealed the Hamilton decision to the Court of Appeal. The court found that the bylaw did not amount to a prohibition of brothels in Hamilton, that the evidence of the effect of the bylaw on SOOBs was scant, and that when ‘choices being made are distinctly ones of social policy... a court should be very slow to intervene’⁷³. However, the court expressly stated that the case will not dictate the outcome of other cases, as ‘appropriate requirements for particular locales may very well vary.’⁷⁴

Comment

The Committee endorses the approach taken in *Willowford*. The PRA decriminalises prostitution, and a bylaw that effectively prohibits sex workers from operating in their preferred manner, as self-employed owner operators, partially defeats the purpose of the PRA.

Auckland’s bylaw was more wide ranging than that of Christchurch, and the Committee was not surprised to see it struck down in light of the *Willowford* decision. Of course, *Willowford* is not binding on other High Court decisions, but up until this point it appeared as though jurisprudence was developing whereby bylaws that effectively prohibit SOOBs would be found to be *ultra vires* and struck down. The Committee is also encouraged by the Court clearly reiterating that decisions on the making of bylaws must be made on legal, rather than moral grounds. In the Committee’s view, this approach reflects the spirit of the PRA, and furthers its purpose.

In the Committee’s view, the sex industry should be regulated, as far as possible, in the same manner as other industries, that is, subject to the general law of nuisance and a regulatory scheme that is based around ameliorating that nuisance. Such an approach may assist in reducing the stigma attached to the sex industry. Where nuisance is not a likely result of the establishment of a shop, factory or brothel, it is unreasonable to place a prohibition on its establishment.

On the Committee’s reading of the Hamilton decision, the case was distinguished on its facts, and the fundamental approach taken in the earlier decisions is still appropriate.

The Court of Appeal decision is, of course, binding on all future High Court decisions, and requires careful interpretation. However, the Court has gone out of its way to state that each case will be different, depending on the locale, giving later High Court Judges leeway to approach each challenge on its merits.

⁷⁰ Para 41

⁷¹ Para 72

⁷² Para 76

⁷³ Julie Conley v Hamilton City Council, CA, Hammond, Robertson and Arnold JJ, 28 November 2007.

⁷⁴ Para 75

9.8 Should the PRA's Bylaw Making Power be Amended?

The Human Rights Commission (HRC), in a letter to the Committee regarding the impact of the PRA on human rights, stated that there appears to be a significant degree of uncertainty about the level of protection accorded to the human rights of sex workers under section 3(a) of the PRA, particularly about territorial authorities' ability to make bylaws under sections 12 - 14 of the Act.

At the time of writing, at least five TAs have bylaws controlling the location of brothels that remain unchallenged. When responding to the questionnaire, some TAs indicated that they would consider promulgating similar bylaws when the legal challenges were resolved. This may lead to further legal action, as each bylaw has to be judged in terms of its local effect, rather than solely on a legal principle. Resolving matters through litigation is costly, time consuming, and places undesirable stress on both parties. Therefore, the Committee has considered whether the PRA should be amended to provide clearer guidance to TAs on regulating the sex industry by bylaw.

One option to deal with this issue would be to amend the PRA to exclude SOOBs from the definition of brothel. This would remove them from regulatory regimes controlling the sex industry, and allow them to be dealt with under the general law. However, it would be something of a fiction to state that four sex workers working from one premise is not a brothel, or that a small owner-operated *brothel* is not a brothel. Furthermore, Parliament very carefully legislated for SOOBs to be specifically excluded from the PRA's licensing regime, but included in terms of the PRA's protections and obligations. To alter that balance by stating that SOOBs are not brothels might have unintended consequences.

Another option is to attempt to legislate rules as to how SOOBs are to be managed by bylaws in such a way that their existence is not threatened. However, as each TAs geographical situation and population spread is different, it would be very difficult to provide hard and fast rules as to the drafting of local bylaws.

At the other end of the spectrum, some TAs called for greater powers to keep SOOBs out of the suburbs. The Committee does not support such an approach, and believes that SOOBs have as much right to operate as any other small business. TAs should be reassured by the recent Court of Appeal decision of *Conley v Hamilton City Council*⁷⁵ which emphasises that Courts should be 'very slow to intervene'⁷⁶ when examining a bylaw that regulates the location of brothels.

The Committee notes that the law is still developing in this area, and the four decisions have gone some way towards clarifying it. It may be premature to amend the PRA on this issue, and it would certainly be controversial. The Committee is of the view that, at this stage, the matter should be allowed to stand.

9.9 The Manukau City Council's Concerns About Street-Based Sex Work

In 2005, community concern and frustration about street-based prostitution and unruly behaviour on the streets of Manukau led the Manukau City Council (MCC) to develop the Manukau City Council (Control of Street Prostitution) Bill. The Manukau Bill sought to prohibit street-based prostitution and associated behaviour in the Manukau District. It created two new

⁷⁵ Para 75

⁷⁶ *ibid*

offences (soliciting and loitering for the purposes of soliciting) which would only apply within Manukau.

After its first reading on 7 December 2005, the Manukau Bill was referred to the Local Government and Environment Committee for consideration. The LG and E Committee was advised by the Ministry of Justice and the Department of Internal Affairs, both of which advised against the Bill's passage.

In its submission to the LG and E Committee, the MCC argued that its Bill promoted the purpose of the PRA, as street-based sex work runs counter to the aims of promoting the health, safety and human rights of sex workers. It also refuted claims that its bylaw, which limited the location of SOOBs to Business Zones, had led to the 'problem of street prostitution'.⁷⁷

The LG and E Committee heard submissions from a number of people in Manukau City who expressed concerns about the negative effects of street sex work and associated conduct in the area. These effects included increased littering, noise and nuisance, a reduced sense of public safety and civic pride, and a decline in property values. The LG and E Committee acknowledged that these are real concerns that need addressing, but was not persuaded that the enactment of the Bill would do so. It suggested various options available to MCC to increase street safety for all people, which were more likely to be more effective than the passing of a local Act.

The LG and E Committee believed that the Bill would present enforcement and jurisdictional difficulties. It stated:

While local legislation typically addresses issues unique to a particular locality and does not involve itself with the criminal law, this local bill creates offences that criminalise behaviour that exists throughout New Zealand. If the bill were passed, citizens would be subject to conflicting criminal laws, depending on their current geographical location. Unlike federal states, New Zealand does not have an established framework for enforcing different criminal offences on a region by region basis.⁷⁸

The LG and E Committee also saw the Bill as being an implicit amendment of the PRA, and believed that allowing a local Act to amend a public statute in this way would set a significant and undesirable precedent.⁷⁹

The LG and E Committee argued that, should the Bill be passed, the displacement of street-based sex workers would impact on neighbouring local authorities where soliciting is not prohibited. This could prompt neighbouring Councils to enact similar legislation. The piecemeal revocation of the decriminalisation of prostitution (as enacted by the PRA) could result.

As well as the Bill being contradictory to the intent of the PRA, the LG and E Committee saw the Bill as having various undesirable practical effects, such as deterring people from leaving the industry, and driving workers underground, which could increase the level of danger they face. One clause of the Bill was also thought likely to be in breach of the Bill of Rights Act.

The Bill was voted down at its second reading, on the advice of the LG and E Committee. Since then, Manukau City has continued to use non-legislative approaches to deal with street-based sex work, (as outlined in chapter eight of this report) and continued to enforce its 2004 Brothels Bylaw. This bylaw prohibits SOOBs from residential areas, although the MCC states that there

⁷⁷ Manukau City Council Submission to the LG and E Committee on the Bill.

⁷⁸ Manukau City Council Report, Local Government and Electoral Committee (2006).

⁷⁹ *ibid*

are houses in its commercial zones (where brothels are permitted) that could be used to operate a SOOB.

The MCC continues to have concerns about street-based sex work. In its response to the Committee's questionnaire, the MCC states that, 'having invested considerable time and resources in non-regulatory methods, the MCC believes that legislation is the weak link'. It calls for an amendment to the PRA so that street-based sex work can be regulated or prohibited, with appropriate enforcement powers for the Police. It also seeks clarification of powers to regulate the location of brothels and the burden of proof required for the prosecution of unlawfully established brothels.

Finally, the MCC seeks the power to impose infringement fees for breaches of its brothel bylaw. This would require the issuing of regulations (at central government level) providing that breaches of the bylaw are infringement offences.

Comment

The prohibition of street-based sex work has never been effective in this country or overseas, and there is no reason to believe that it would have been in this case. Rather, it may have driven street workers to less safe places, or made them work illegally in prohibited zones.

Accordingly, the Committee endorses the reasoning of the LG and E Committee. Contrary to the MCC's submission, the Bill ran directly counter to the purpose of the PRA, namely the protection of the human rights of sex workers and the promotion of their health and safety. The PRA aims to protect the rights of all sex workers, including those who choose to work from the street.

The Committee visited Manukau City, and particularly Hunters Corner. It seemed apparent to Committee members that street-based sex workers were not the only cause of unease in the area. When discussing the matter with local Police, the Committee was informed that the main social problems locally are family violence and issues stemming from the abuse of alcohol.

The law regarding the power to regulate the location of brothels has been clarified by the courts, particularly now that there is a Court of Appeal decision on the matter. Quite simply, a TA cannot prohibit the sex industry under the guise of regulation. Provided that there is 'a nexus between the policy concern identified and a location from which brothels have been excluded', a bylaw will be valid. As discussed above, the Committee does not see the need for amending the legislation at this stage in the law's development.

The burden of proof in any summary criminal procedure falls on the informant, or the prosecution. However, the PRA makes a limited exception to this general rule. If a person is charged with operating a brothel without a certificate, and offers as a defence that they are not required to hold a certificate because they are working at a SOOB, it is for the person charged to prove that assertion on the balance of probabilities⁸⁰.

There have been no regulations prescribing that a breach of any sex industry bylaw is an infringement offence to date. The Committee has been advised by the Ministry of Justice that it has developed guidelines, due to be published shortly, indicating in which circumstances it is appropriate for infringement regimes to be established. TAs and LGNZ may wish to consult

⁸⁰ This is similar to the approach taken to other 'positive defences' in criminal cases, such as insanity of the partial defence of provocation to a charge of murder.

these guidelines, and determine whether LGNZ, through the Department of Internal Affairs, seek to have regulations promulgated to establish an infringement regime.

The Committee agrees with the MCCs submission that the bylaw prohibiting SOOBs from operating anywhere other than in Business Zones has not led to the development of a street working scene. The CSOM report indicates that there is very little movement between the sectors of the sex industry, so it is very unlikely that a large proportion of Manukau street sex workers would transfer to SOOB work if it were more available.

The Committee visited the areas frequented by street-based sex workers in Manukau as part of its general research, and also received a substantial amount of information from MCC in response to the questionnaire. We recognise that the Council has genuine concerns about street activity, and has taken many non legislative steps to try to deal with it. We recommend that it continue to work with NGOs and the street workers themselves, and consider the approaches outlined in chapter eight.

Conclusions

For the majority of TAs, the PRA and the sex industry is not an issue. However, for some TAs in the Auckland area, and for Christchurch Council, there are concerns regarding street work. For these TAs, the level of public interest was such that they would have been remiss not to act. The Committee commends the Manukau and Christchurch TAs for their non-legislative efforts to deal with a social issue, and encourage them to continue these efforts.

The court decisions regarding the regulation of the location of brothels, and Parliament's rejection of the Manukau Bill have clarified the extent of TAs powers regarding the location of brothels. There may be further legal challenges to bylaws ahead regarding location, but in the light of the Court of Appeal decision, each case will be settled on its own facts. Accordingly, it would be inappropriate, and very difficult, to legislate hard and fast rules that would apply nationwide to the location of brothels.

Ongoing work by a range of agencies, in co-operation with the local TA, and the sex industry itself, is desirable, rather than the industry and the TAs working against each other.

The Committee concludes there is no need to amend the provisions of the PRA in light of the experience of local government working with it.

Recommendations

The Committee recommends that LGNZ consider updating the Prostitution Reform Act Guidelines it issued in 2003 in the light of developments since that time.

10 Employment Conditions

10.1 Introduction

The illegal status of the sex industry prior to the enactment of the PRA had a marked effect on the employment conditions faced by sex workers. The CSOM study noted that criminalised sex workers had none of the rights accorded to workers in other occupations and, therefore, they were open to coercion and exploitation by managers, pimps and clients. No health and safety guidelines governed working conditions.

One of the purposes of the PRA is to create a framework that ‘safeguards the human rights of sex workers and protects them from exploitation’. When preparing this part of the report, the Committee has sought to ascertain how effectively decriminalisation has achieved this purpose. We conclude that, while progress has been made, there is clearly some way to go before sex workers enjoy the same rights and protections as those working in other industries. The Committee is of the view that an important first step that needs to be taken is the widespread adoption of written contracts that meet best practice standards, either ‘of service’ (employer/employee relationship) or ‘for services’ (independent contractor status) to clarify the employment status and working conditions of sex workers who work in brothels.

The standard position in the industry is that sex workers working in brothels are independent contractors. However, legally, this is by no means certain. Were such sex workers found to be employees, a wide range of rights would automatically accrue to them that they currently do not enjoy.

Clarification can only definitively occur through a determination being made by the Employment Relations Authority or the Employment Court. However, the Committee notes that it is open to brothel operators to offer to make sex workers employees, and would encourage them to consider the option.

10.2 The Sex Industry Prior to 2003

Working conditions in parlours and escort agencies were set by the individual owners and operators of these businesses, operating without the constraints of employment law, and safe in the knowledge that complaints to the authorities were unlikely. As the Committee reported in its first report in 2005, a system of fees being charged to workers became common. Both the Committee, and the Select Committee that heard submissions on the Prostitution Reform Bill, were told of sex workers being charged by brothel operators for the use of towels, laundry and other incidentals. ‘Shift fees’ were also imposed in some brothels, where the sex worker was charged for working a shift. In addition, fines were exacted for being late for work and other misdemeanours.

Finally, most workers were obliged to pay bonds to an operator on commencing employment. These bonds were sometimes not returned, especially if the worker did not remain in the job for long.

In the Committee’s 2005 report, NZPC reported that some employers used these systems of fines, fees and bonds to coerce certain behaviours from their workers. This included making sex workers see more clients or working longer hours than they wished.

The Sex Industry in New Zealand: A Literature Review (Jordan, 2005) quotes a sex worker discussing the industry prior to decriminalisation.

The industry as it is set up, gives power to the management of parlours and agencies. When I am working I am aware I could be busted for prostitution. If I have trouble at work, I am not likely to go to the police. This has resulted in a sex industry culture, a culture that is not inherent in prostitution, but rather is a direct result of the present laws. I'm talking about things like having to work night shifts until 4 or 6 or 7 or 9 in the morning, sometimes regardless of whether there are clients around, sometimes until the clients stop coming in, however late that may be. We are charged bonds to work places; shift fees each night, dress hire, charged fines. A typical fining system, such as the one where I worked, was that if you are late for a shift, you pay half of your money from your first job as a fine. So for a one-hour job, the worker ends up with \$25. That's a \$45 fine and \$20 shift fee. If you don't show up for a shift, you pay half of all your jobs that night as a fine. If you don't give notice when you leave, they will keep your bond, that could be \$100 or \$200.

(Submitter to the Select Committee on the Prostitution Reform Bill)

Sex workers paid these fines and fees out of the money paid to the workers by their clients. In the 1980s and early 1990s, payment for services was often made directly by the client to the worker, without the involvement of the brothel operator. However, with the increasing use of credit cards, and later the prevalence of EFTPOS in most parts of the country, it soon became standard for the operator to charge an 'all inclusive fee' which included sexual services. From this position, the operator could both set the price for sexual services, and extract fines and fees from the workers' earnings before they were paid.

It was hoped that decriminalisation of the sex industry would eliminate exploitative practices such as these, as sex workers came to enjoy the same employment protections as those enjoyed by workers in other industries. Research indicates that, while this process may have commenced, it is by no means complete.

10.3 Employment Rights After Decriminalisation

10.3.1 The Status of the Sex Industry

A decriminalised sex industry theoretically has the same status as any other industry, and those working in it experience the same sort of employment practices as those in any 'normal' industry. However, in reality this is not the case. There is a deeply ingrained moral and social stigma attached to working in the sex industry. The provision of sexual services for money, rather than for procreation or as an expression of love, and the fact that a sex worker (particularly a woman) has multiple sexual partners both draw criticism from a significant sector of the community.

This stigma may still make some sex workers reluctant to complain to authorities, such as the Department of Labour, about exploitative work practices. Their occupation may have previously been unknown to family and friends, and taking a complaint all the way through the legal processes may threaten that privacy. In addition, exploitative practices are long standing in the sex industry, and, in the absence of a legal challenge to them, there remains uncertainty as to their legality amongst many in the industry.

10.3.2 Fines, Bonds and Fees

The general impression of the informants in the CJRC interviews was that brothels who had treated their workers fairly prior to the enactment of the PRA continued to do so, and those who had unfair management practices continued with them.

Nothing has changed here because we've always been good. Elsewhere who knows – but you hear lots of stories still of poor management, workers having to have sex with the boss as part of interview, money taken off girls, personal details used to blackmail them if they try to complain or cause trouble. (They 'out' them to their families.)

(Brothel Operator, CJRC, 2007)

NGOs were encouraged by some of the brothels that had opened after the enactment of the PRA, which they referred to as 'the new generation'. These new operators appeared to run things by the book, and had thought of ways to improve the working conditions of the sex workers.

NGOs also commented that a positive effect of the PRA was that it was now possible for sex workers who were unhappy with the conditions in brothels to set up a business and work for themselves.

Some operators have now changed their practices regarding bonds and fines.

Yes, we've had to change practices. There are no fines or bonds any more.

(Brothel Operator, CJRC, 2007)

Girls choose which shifts they work and what hours. I get cross though, if they don't turn up for shift they're supposed to do (unless they phone in that they're sick or something). We used to fine them, but we don't any more.

(Brothel Operator, CJRC, 2007)

Some operators commented how this had made running their business more difficult.

A \$200 bond was good in a way (they got it back). And it was useful in managing the business. We knew when she was finishing ('I'll take my bond on Friday'). Now, you never know when they are finishing. They just don't turn up.

(Brothel Operator, CJRC, 2007)

You can't control the girls now – sometimes they are not here when clients arrive. You can't run a business like that.

(Brothel Operator, CJRC, 2007)

Other operators used slightly modified versions of financial control, and called bonds by another name.

We don't take a bond – but we're firm but fair. We're clear at the beginning. If a lady is 1–2hrs late, she is sent home – as she will have been replaced for that shift. If there is a 'no show – no phone' when a client made a booking, we lose. We charge her the lost room fee. But they are made fully aware of this when they start.

(Brothel Operator, CJRC, 2007)

We no longer charge any fines or shift fees. We still operate 'bonds', but call it a banking deposit. If they do a runner we get paid.

(Brothel Operator, CJRC, 2007)

Bonds are illegal, so now they call them 'indemnity'.

(SOOB, CJRC, 2007)

Workers have to say if they can't meet the terms of their contract. For example, there's a \$70 infringement fee if they can't come in. It's set out in the rules. The owner went to an industrial relations person for advice and uses NZPC as a mediator for disputes.

(Brothel Operator, CJRC, 2007)

Comment

The Committee recognises that the illegality of the sex industry prior to 2003 allowed exploitative employment conditions to develop. These conditions are long-established, and work to the advantage of brothel operators.

Despite decriminalisation, the social stigma surrounding involvement in the sex industry continues. Sex workers continue to be exploited in some brothels. The sex industry does not enjoy the same degree of social legitimacy as other industries, and is different to them to that extent.

There is evidence that the sex industry is adapting to its new status, and that some brothel operators have changed their employment practices in an effort to comply with their legal obligations. However, this does not appear to have been universally adopted. In addition, some of those who have tried to comply might be found, if challenged through the courts, to have not gone far enough.

While there appears to be a general awareness amongst sex workers and brothel operators that workers' employment rights have increased, it is unclear how much detailed knowledge about such rights and their enforceability exists in the industry. This may contribute to ongoing exploitative practices.

The Committee has considered whether legislative amendment, such as the prohibition of bonds, fines and similar practices would be helpful to deal with this issue, and rejected the option. The general employment and criminal law is adequate to regulate the sex industry, if it is understood and applied by those in the industry. To this end, we recommend that developing relationships with NGOs and government agencies, and continuing education of those in the industry, be encouraged.

Proposed changes to the brothel operator's certification system, as discussed in chapter six, will also improve knowledge of appropriate management practices and operators' obligations under the PRA and employment legislation.

10.4 Employment Status of Sex Workers

Street-based sex workers and those who work in SOOBs are generally self-employed, and their employment status is clear. They set their own work conditions, have responsibility for paying their own tax and ACC levies and, under the HSE Act, for reporting any serious harm that they suffer as a result of their work to the Department of Labour.

The considerably more difficult question is the employment status of sex workers who work in the ‘managed sector’ of the industry (i.e. brothels other than SOOBs). They may be either independent contractors who have a contract for services with brothel operators, or employees with a contract of service.

Traditionally, and certainly prior to the enactment of the PRA, sex workers in brothels have been treated as independent contractors by brothel operators. However, one reason for this arrangement was related to the illegality of the industry: operators believed (erroneously) that this more distant arrangement protected them from allegations of living off the earnings of prostitution or operating a brothel. Obviously, such concerns are no longer a consideration.

The Inland Revenue Department (IRD) also treats brothel workers as independent contractors, in the absence of Pay As You Earn (PAYE) payments being made on their behalf by brothel operators. It has recently been sending letters to brothel operators, reminding them of their tax obligations.

Whether someone is an employee or an independent contractor is determined under the Employment Relations Act 2000 (the ERA). Section 6 of the ERA defines an employee as ‘any person of any age employed by an employer to do any work for hire or reward under a contract of service’.

At the time of entering an employment relationship, it is up to the sex worker and the brothel operator to agree what the nature of that relationship will be. But if a dispute arises at a later date as to the true nature of their relationship, the only way of definitively resolving it is to take it to the Employment Relations Authority. If either party is unhappy with that body’s decision, the matter can be taken up with the Employment Court. When determining the true nature of the relationship between them, the Authority or the Court must consider all relevant matters, including the intention of the parties, but is ‘not to treat as a determining matter any statement by the persons that describes the nature of their relationship.’

While the ERA provides the legislative framework for defining employment status, it is up to the Authority or the Court to decide specific cases. Some ‘traditional’ tests have developed at common law for making this decision, and these were recently confirmed in a case that went to the Supreme Court (*James Bryson v. Three Foot Six Limited* SC CIV 24/2004). Applying these tests, some employment relationships that have traditionally been thought to be of one type have been found to be of the other by the Court.

While there are elements of a contract for services (independent contractor) relationship in the usual relationship between brothel sex worker and operator, and an expectation, at least on the part of the operator, that this is an accurate description of the relationship, there are also elements of a contract of service (employee/employer) relationship.

The distinction is crucial. Only an employee can take a personal grievance action to the Authority or Court, and only an employee is automatically guaranteed minimum rights such as holiday pay, sick pay and others. An employee has tax deducted automatically from their earnings, and no Accident Compensation Corporation (ACC) or Goods and Services Tax (GST)

obligations. An employee has different rights and fewer responsibilities under the HSE Act than an independent contractor, which work to an employee's advantage.

A contractor, on the other hand, negotiates a contract for services with a brothel operator under far fewer restrictions. She or he enforces their contract through the civil courts, must pay their own tax, ACC levies and GST (though she or he can claim for expenses such as for condoms and business use of cell phones, towels and industry-specific medical expenses), set their own working conditions, hours of work, and fees. She or he has significant responsibilities under HSE, and failure to take action to meet these may have serious financial consequences.

The Committee notes that, since 1 December 2004, the line has been slightly blurred by the insertion into the ERA of section 144A by the Employment Relations Amendment Act (No 2) 2004. This provision allows the Department of Labour to offer dispute resolution services to parties in working relationships that are not employment relationships.

This means that an 'independent contractor' sex worker and the 'principal' (brothel owner/operator) that she or he has a contract with can avail themselves of a State-funded mediation service under the ERA, just as though they were in an employee/employer relationship. However, this free mediation service is only one small aspect of the rights and responsibilities that the employee/employer relationship confers, and extending it to contracting parties does not alter the fundamental fact that the two types of employment relationship offer very different advantages and disadvantages to the parties.

Brothel-based sex workers must work to the hours, conditions and for the fees set by the operator. In these terms, the traditional relationship between brothel-based sex worker and brothel operator falls within the margins of the employer/employee relationship.

As far as the Committee is aware, no sex worker has taken a case to the Authority or the Court to have their employment status clarified. It would certainly assist in promoting the employment rights of sex workers if this was to occur, whatever the outcome.

However, the matter may never be entirely resolved for the industry as a whole, as while some of the Court's decisions are considered to be relevant to an entire industry or type of contract, others are only relevant to the particular arrangement between one employee and one employer. Because the Court must look at all the relevant facts in a case, rather than just the words of a contract, a difference between the overall experiences of one individual worker and another might mean that a decision on the status of one sex worker is only determinative of that worker's status, rather than that of all managed sex workers.

Comment

The Committee recognises that contractor vs employee issue is crucial when discussing the employment conditions of sex workers working in brothels. Many other questions and issues hang off it.

However, it would be inappropriate for the Committee to make a declaration of what it believes the employment status of all sex workers who work in brothels 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 courts. Some workers would prefer the benefits and certainty of employee status, some 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 allowing them to take control of their employment relationships.

Equally, it would not be appropriate for the Committee to recommend legislative prescription of this relationship. This would be contrary to the philosophy of the ERA (which does not prescribe rules for specific industries) and to the notion that sex workers, like all workers, have the right to negotiate their own conditions of employment.

What is important is that sex workers and brothel operators have the choice and the capability to negotiate the employment relationship that is most appropriate for them, and that the resulting relationship does not allow for sex workers' exploitation.

As with many other industries, there is room for both independent contractors and employees in the sex industry. Both modes of operation could and should have workers' rights and responsibilities built into them, together with appropriate dispute resolution mechanisms. In an industry with a history of exploitation of workers, that has only recently been decriminalised, it is important that the rules under which each sex worker operates are clear. Clarification of employment conditions would be much assisted by the increased use of formal written contracts, as discussed below.

10.5 Employment Contracts in the Sex Industry

Prior to 2003, written employment contracts for sex workers were rare, as they could be used against both the operator and worker as evidence of prohibited activity. However, the enactment of the PRA has opened the industry up to employment practices that are commonplace in other industries, including written contracts for services and, less commonly, contracts of service.

During the course of researching the sex industry, the Committee visited brothels in Auckland, Wellington and Christchurch, and spoke with brothel operators and owners. Information received indicates contracts of service are probably limited to receptionists/managers and drivers – those not directly involved in the provision of sexual services. All of the commercial brothel operators interviewed for the CJRC Key Informants report (25 operators) considered the sex workers at their establishments to be self-employed contractors rather than 'employees'. They typically sign a contract with the brothel operator agreeing to provide specific services. They were seen to be responsible for filing their own tax returns.

While written contracts are becoming increasingly common, they are by no means found in all brothels in New Zealand. Verbal contracts are binding at law and, even though the ERA provides that all employment contracts must be written⁸¹, the Court of Appeal has held that this does not render oral employment contracts invalid.⁸² The difficulty with unwritten contracts is that terms, conditions and rights are not clearly established. This makes enforcement of a contract, and the resolution of disputes, very difficult.

Even when the employment relationship between a sex worker and a brothel operator is governed by a written contract, it appears that such contracts do not necessarily meet standards of best practice. The Committee has viewed a contract for services used in a currently operating brothel that retains many of the exploitative practices of the pre-decriminalisation era, and would be surprised if there were not more such contracts throughout the industry.

⁸¹ Section 65(1)(a) Employment Relations Act 2000.

⁸² Warwick Henderson Gallery Ltd v Weston (no 2), Court of Appeal, Hammond, Baragwanath, Potter JJ, 14 November 2005.

The absence of written contracts, or their questionable quality, may act to discourage brothel operators and sex workers from taking employment disputes that the parties cannot resolve themselves to the appropriate authority (i.e. the Department of Labour⁸³ or to civil court). However, there are other reasons for the absence of legal challenge to sex workers' employment conditions. Sex workers know that there is a demand for their services, and that they can leave one brothel for another with ease. Many brothels place advertisements saying that they are constantly hiring, and there is little incentive to take a brothel owner to court over working conditions when a worker can have another job in a matter of hours.

There is also the possibility of publicity if a matter is taken to court, with the stigma that is still attached to sex work providing a powerful disincentive to taking such action.

Comment

The Committee acknowledges that there are strong disincentives for sex workers considering challenging brothel owners/operators in court. It is to be hoped that these will reduce as the public becomes more accepting of the sex industry, but this will be a slow process. In the meantime, it is the responsibility of brothel operators to improve the prevalence and quality of written contracts in the sex industry, with the assistance of the Department of Labour and NGOs such as NZPC.

10.6 The Formalisation of Employment Relationships

There may be some resistance within the sex industry from those who do not want the responsibilities that come with formal employment contracts. This is most likely to be the case when a traditional employer/employee relationship is proposed. Formalising the employment status of sex workers would increase costs for brothel operators. Making brothel operators responsible for paying tax, ACC levies, holiday and sick pay for each worker would certainly decrease the profitability of running a brothel.

Equally, sex workers may be hesitant to sign contracts and become 'official', due to concerns about confidentiality and maintaining their autonomy. Some sex workers are concerned about brothel operators passing their personal information on to other authorities, such as the Inland Revenue Department. NZPC reports that some sex workers are concerned that they will be assessed for back taxes if they become known to IRD and, in a meeting between IRD and the Committee's secretariat, IRD reported that there had been some calls from sex workers for a tax amnesty for their earnings before the industry was decriminalised. This was confirmed by NZPC.

There have also been concerns expressed to and by NZPC that adopting employee status might reduce the effectiveness of the protections provided by sections 16 and 17 of the PRA, namely the right not to be induced or compelled to provide commercial sexual services, and the right to refuse to do so. NZPC advocate raising awareness that this is not the case.

From the government's point of view, the benefits of formal employment agreements in the sex industry include increased tax and ACC compliance from both workers and operators. In addition, the government has a duty to protect all its citizens, and the existence of formal contracts for sex workers helps to meet that duty by lessening the risk that they are the victims of exploitative employment conditions.

⁸³ Either under section 144A ERA for independent contractors/principals, or through the usual mechanisms for those in employee/employer relationships.

Comment

The Committee believes that concerns over increased compliance costs and loss of profitability as a result of formalising employment relations in the sex industry should not be regarded as an acceptable barrier to that process. The sex industry has been decriminalised; those who operate within it must now experience the advantages and disadvantages under the law that all businesses experience.

Any fears that sex workers might have about losing the right to say no to sex if they adopt employee status are groundless. Brothel operators and sex workers cannot contract out of the protections provided by sections 16 and 17 of the PRA (the right not to be induced or compelled to provide commercial sexual services, and the right to refuse to do so). Any such contract will be illegal, and shall have no effect under the Illegal Contracts Act 1970. A best practice employment contract or contract for services must reflect the statutory framework set up by the PRA, which includes section 16 and 17's protections. If there is any attempt to force a worker to work against her or his will, using the worker's contractual obligation as a justification, it can be resolved in court.

The formalisation of employment relations would provide more certainty with regard to the payment of tax by sex workers. It has become apparent to the Committee that some employers are not taking their responsibilities in respect of employment arrangements seriously. They have a role to play in regularising the contract arrangements with managed workers. This includes employment status and the provision of best practice employment arrangements. Brothel operators must recognise the new legal status of the sex industry, and align their practices with other industries in the service sector.

The only concern that the Committee had with recommending the wholesale adoption of professionally prepared written contracts is that it might lead to a two tier industry emerging, of those who insist on a proper contract, and those willing not to do so. Even if such a system did not arise within and between particular brothels, the introduction of formal contracts might drive some workers onto the street, which would be undesirable.

However, the Committee is of the view that, if its recommendation that no particular type of employment relationship become an industry standard, or be prescribed by law, the chances of this occurring are relatively small. By leaving each sex worker to negotiate a best practice-based employment contract of some sort, and allowing the industry to develop its own standards within the law, a wide enough variety of employment conditions should remain available to meet most sex workers' individual needs.

10.7 Next Steps

The Committee recognises that, even with government intervention, change in any industry happens slowly. This is usually for the best, provided there is a framework in place that protects the rights and promotes the interests of all involved in it. In the Committee's view, the sex industry should be allowed to evolve naturally, without radical government intervention beyond that which has already occurred (i.e. decriminalisation).

However, having best practice employment relationships would be an excellent way to foster the 'normalisation' of the industry that the PRA foreshadows. As a first step, the Committee

considers that extra information on employment matters could be included when providing brothel operators with brothel certificates. This is discussed further in chapter six.

As discussed in chapter five, the Committee sees a need for properly funded NGOs to act as brokers for sex workers as they access mainstream services. These include services provided by the Department of Labour, Work and Income New Zealand, employment consultants and recruitment agencies. But equally, the Department of Labour and other government agencies such as ACC and IRD have an important role in providing information and advice on employment rights and responsibilities to those involved in the sex industry. If more and better information is provided to brothel operators about their responsibilities under the PRA, as employers or contractors of sex workers, undesirable management practices will become rarer, and sex workers will be empowered to challenge unfair conditions.

The Committee is very conscious that the sex industry has been an illegal and stigmatised industry for a very long time, and that many sex workers had negative experiences with government agencies and the authorities in general. This has led to a high level of mistrust of authorities amongst some sex workers, which will not disappear overnight. In order for the sex industry to develop a culture of voluntary compliance with employment and tax law, it is crucial that constructive, positive relationships are carefully developed by government agencies with the sex industry. Emphasising the positive aspects of being within the law, or at least correcting some misconceptions about the negative aspects (e.g. must be an independent contractor because IRD says you are; will lose right to say 'no' if enter an employment contract), would be useful starting points for government agencies.

Employment law expertise may need to be bought in to NGOs willing to work in this area, and extra funding may therefore be required. However, Community Law Centres may be able to assist with advocacy, and the relevant government agencies, such as the Ministry of Health and the Department of Labour, can continue to provide educational material and assistance as required.

It is in society's interest that the sex industry operates under lawful, fair employment conditions, in terms of both the health and safety of New Zealand citizens, and New Zealand's international reputation as a promoter of human rights.

The Committee notes that street-based workers and workers in SOOBs are self-employed, and do not have employment contracts to negotiate. However, as self-employed workers they have tax, ACC and OSH obligations that they must meet.

Recommendations

As regards brothel-based sex workers, the Committee recommends that:

- the sex industry 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 services be left entirely to the parties to the contract, with general employment law, the Employment Relations Authority and the Employment Court available as for any industry;
- the Department of Labour and IRD work with the sex industry to clarify any misconceptions about the right to say 'no' and the choices that are available to them regarding their employment status; and

- 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.

11 Common Misconceptions About Prostitution

In compiling this report, the Committee has examined common assumptions about sex workers and the sex industry. The research undertaken for the review has provided information that challenges, and in some cases refutes, commonly held perceptions about the sex industry and those who work in it. The Committee considers many commonly held perceptions have been based on stereotypes and a lack of information. The Committee wishes to point out that findings that relate to the sex industry as a whole, may not apply to individual sex workers. Similarly, findings about one sector of the industry may not always be true for other sectors.

11.1 Coercion

Despite the perception that all sex workers are made to work by someone else, only 4.3% or approximately 28 of the 656 female participants in the CSOM study reported being made to work by someone. This was twice the number of male workers (2.1%); no transgender workers reported being made to work. Of the 201 street workers surveyed, 8% (about 16 people) reported being made to work by someone. Participants who started sex work before the age of 18 (18.3% or approximately 141 people) were more likely to report being made to work by someone (9.5% or approximately 13 people), than those who started after the age of 18 (2.5% or approximately 3 people).

The Committee recognises the difficult nature of proving coercion has occurred, as well as the reluctance on the part of exploited people to lay a complaint. However, information received by the Committee suggests coercion is not widespread. The Committee also acknowledges that sex work is a job some people have chosen and are happy doing.

11.2 Links with Crime and Gangs

A Police report on the vice scene in 2001 (prior to decriminalisation) pointed to links between organised crime and the sex industry, but was unable to quantify the extent of the activity due to its covert nature. The report also pointed out that private workers were less likely to be connected to organised crime, and many commercial sex businesses had no connection with criminal activity. Police currently does not have a structured way of collecting information related to prostitution. However, anecdotal information from Police at a district level suggests the relationship between prostitution and criminal activity has not altered post PRA (NZ Police, 2007).

The Police Association told the Committee that prostitution was not a big issue for its members and evidence did not exist of a link between the sex industry and general crime. Sex workers were more likely to be victims of crime rather than offenders. On the question of gang involvement, the Association reported some under age people involved in prostitution in Auckland may have connections to 'youth gangs'. But it was more a matter of under age people hanging around with friends who happen to be in a youth gang, rather than a pimping or coercive type relationship. The Association said there was no evidence of a linkage between under age people used in prostitution and the 'traditional' patched gangs. One reason given for gangs' lack of interest is that it is high risk for little reward.

The CSOM study notes that, during the in-depth interviews, there was no mention of gang involvement or coercion. Outside observers may consider a connection with gangs, for example, as evidence that a sex worker is being made to work, whereas the sex worker in question may not perceive themselves as being coerced.

The Committee considers that the links between crime and prostitution are tenuous. The Committee could not find any evidence of a specific link between crime and prostitution.

11.3 Drug Use

The CSOM study asked participants about the reasons why they stayed in the sex industry. The most common reasons were financial. Contrary to popular perception, only 16.7% reported working to support alcohol or drug usage, whereas 82.3% reported they needed the money to pay for household expenses. But, when these findings are broken down by sector, street-based sex workers are more likely to report needing to pay for drugs or alcohol (45.1%), than managed (10.7%) or private indoor workers (13.5%)(see Table 15). Street-based workers are also more likely than other sex workers to report accepting drugs, alcohol, food or accommodation as payment for sexual services.

11.4 Media Influence on Public Perception

The debate around the law reform has raised the profile of the sex industry in the public mind. Articles about the presence of brothels, SOOBs and street-based sex workers in communities have appeared regularly in some newspapers. Analysis of newspaper articles referring to the PRA shows how media coverage can be inconsistent across different newspapers, and is dependent on the editorial approach of the particular publication.

In an analysis of media reporting on the implementation of the PRA, Nicolas Pascoe (2007) found more news articles about the PRA and prostitution appeared in the *Christchurch Press* than in any other publication. In addition, the *Press* published significantly more letters to the editor referring to the PRA and/or prostitution than any other newspaper. It was also found the *Press* was more likely than other newspapers to publish articles and letters containing negative assumptions about the law reform. The most common negative assumptions were that decriminalisation will increase the numbers of under age people involved in prostitution, and that there is or will be more crime associated with sex work post PRA.

The analysis concluded the way in which an issue is reported (whether negative or positive assumptions about it are made and reinforced), may prompt attention from other sectors of the media and from politicians whose involvement in turn adds weight to the perception that the matter is of grave concern. Thus, the perceived scale of a 'problem' in a community can be directly linked to the amount, and tone, of newspaper coverage it receives.

The Committee considers that much of the reporting on matters such as the numbers of sex workers and under age involvement in prostitution has been exaggerated.

12 Invisibility of Clients

In discussions about the sex industry, emphasis usually falls on sex workers rather than on their clients. This can provide a distorted view of the nature of the industry and result in the demand side of prostitution seldom being acknowledged.

The focus of the Committee's report has been to assess the impact of reforming the laws relating to prostitution as they applied to sex workers. As such, research for this report has focused on sex workers and their experiences.

There is a paucity of information about clients, which in itself reflects their invisibility. There is even less known about the views of clients and their experience of the law reform. However, client behaviour has been observed to have changed to some extent after the enactment of the PRA. Information from sex workers and brothel operators suggests clients are more open and relaxed since the law reform. In addition, the Committee members noted clients in brothels they viewed seemed not to mind being seen in a brothel.

12.1 Who Buys Sex?

There have been a small number of studies done internationally (and an even smaller number in New Zealand) that consider the role of clients in the sex industry. Indications are that for some men paying for sex is a relatively accepted and common phenomenon.

In a UK study, 1 in 29 men admitted buying sex, with this figure increasing to 1 in 11 men in London, where the largest sex industry exists. The study also indicated the proportion of men reporting paying women for sex increased during the five years from 2% in 1990 to 4.2% in 2000 (Ward et al, 2005). An Australian study based on telephone interviews with over 10,000 men showed that approximately one in six men (15.6%) had ever paid for sex, and 1.9% had done so in the past year (Rissel et al, 2003). Results from a New Zealand study indicated that 6% of men had paid for sex in the past year (Dickson et al, 1995, cited in Rissel et al, 2003)

Stereotypes of clients often portray them as seedy, socially inept men unable to 'pull' a woman, yet this has not been borne out in research, nor in descriptions of clients voiced by sex workers. The research suggests purchasing sexual services is the practice of many 'normal', successful, socially competent and often married men. A study conducted on men arrested for 'kerb crawling' in the UK generated a 'typical' client profile of a man in his mid-30s, in full-time employment and with no criminal convictions (Hester and Westmarland, 2004).

12.2 Why Men Buy Sex

One of the few New Zealand studies conducted of clients was undertaken through a project jointly funded by NZPC and the Health Research Council of New Zealand (Chetwynd and Plumridge, 1993). In describing the motives for their encounters with sex workers, the clients referred to the straightforwardness of the exchange (sex without complications), the pleasurable aspects (providing company and fun), as well as alleviating boredom and providing variety. The average age at which participants in the study first purchased sex was 28 years, with the range of ages spanning from 14 to 50 years of age.

A smaller qualitative study of clients purchasing sexual services in New Zealand was conducted by Jan Jordan in 1997. Nearly half the men interviewed were married, two were widowed, one was separated, and four had never been married (including two men in their 70s). The occupational and class backgrounds of the men varied considerably, as did their incomes. Their reasons for visiting sex workers revolved around accessing sexual services, but the significance they attached to sex varied. Factors cited included seeking companionship, accessing support, alleviating boredom and using it as a means to lose their virginity.

Some people may assume that men visit sex workers for alternative or ‘deviant’ sexual practices. Such assumptions need to be balanced out by sex workers’ accounts describing by far the majority of their clients want very ordinary and conventional sexual practices.

The profile of a client as a normal, successful and law abiding citizen does not extend to all clients. One exception is in the use of under age people in prostitution. The Committee understand some of the people arrested for seeking contact with under age people during an operation in Auckland in early 2008 had previous convictions for serious assault, rape and other sexual offences.

12.3 Criminalising Clients

One way to remedy the ways in which legal jurisdictions have ignored the role of clients has been to criminalise men’s participation as clients. The kerb-crawling legislation in the UK is an example of this, as is the Swedish model of criminalising men who buy sex (both these approaches are discussed further in chapter eight). Evaluations of these approaches suggest little change in the overall level of prostitution services provided, with demand being either relocated elsewhere or in the transactions being negotiated in more clandestine local environments (Kilvington et al, 2001). When asked if anything might deter them from paying for sex, few men in an East London study mentioned criminal sanctions as holding any relevance (Coy et al, 2007).

Comment

The focus of the PRA is on promoting the rights, health and well-being of sex workers. In recognising the demand side of prostitution, this legislation represents an attempt in law to apply some constraints to clients’ behaviour. For example, via the requirement that clients adopt safe sex practice, and by increasing the penalty for the use of under age people in prostitution.

The Committee considers the need remains for research to identify the clients of New Zealand sex workers and to establish a fuller picture of their motivations and reasons for buying sex, in order that New Zealand findings can be compared with those obtained internationally.

Efforts to criminalise clients do not appear to deter demand for sex, and the unintended consequences may increase the vulnerability of women offering sexual services. The PRA reflects a more pragmatic sentiment, recognising that, even if viewed by some as undesirable, the practice of prostitution is likely to remain given ongoing levels of demand by men seeking to purchase sex.

While demand to buy sex persists, ways need to be found to reduce the vulnerability of workers and increase perceptions of them as human beings with rights that need safeguarding.

13 Trafficking

The argument that trafficking in humans and prostitution are inexorably linked is in part due to policy decisions made by the United States. Although much international dialogue surrounding both trafficking and prostitution claims prostitution and trafficking are often linked, the extent of this link is debated.⁸⁴ The Committee considers that in the case of New Zealand, there is no link between the sex industry and human trafficking.

Every year the US State Department produces a Trafficking in Persons Report (TIP Report), which ranks countries according to the extent that they comply with US anti-trafficking standards. The definition of trafficking used in the assessment process is the US one. The New Zealand definition of trafficking requires international movement. While New Zealand's ranking has been threatened by the US definition, New Zealand's tier ranking is still the highest (most favourable) Tier 1 ranking, and has been ever since New Zealand was included in the report in 2004.

Under US law, prostitution is illegal in most states and the transportation of people across state lines for the purpose of prostitution is considered human trafficking. In addition, any under age person used in prostitution is considered a victim of trafficking.

New Zealand is more likely to deal with the forcible movement of persons within New Zealand (whether for sex work or other purposes) as kidnapping, slavery, or other related forms of offending. The PRA specifically prohibits the use of persons under 18 years in prostitution, whether or not they have been transported internally or internationally. In addition, section 16 of the PRA makes it an offence to compel (via threat or any other means) a person to provide commercial sexual services, or earnings from prostitution.

Information received from Immigration Service NZ indicates that no situations involving trafficking in the sex industry have been identified (Department of Labour, 2007). In addition, there have been no prosecutions for trafficking under section 98D of the Crimes Act 1961.⁸⁵ Immigration only monitors the indoor sector of the industry and does not check the employment conditions or immigration status of street-based sex workers. The Committee is satisfied, on the basis of information received from NZPC and other NGOs involved with street-based sex workers, that during its period of investigation, there were no internationally trafficked women working as street-based sex workers in New Zealand.

The Committee is aware that some people working in the sex industry are doing so in breach of their immigration status. The Committee does not endorse this illegal activity. However, it is also concerned that these sex workers are not protected under the PRA and may be vulnerable to exploitation. The Committee considers the prohibition on non-residents working in the sex industry, coupled with New Zealand's geographical isolation and robust legal system, provides a protection against New Zealand being targeted as a destination for human traffickers.

⁸⁴ It is U.S.A policy that no foreign NGOs that support legal state-regulated prostitution should be awarded U.S. grant funds (U.S. State Department, 2004). In response, a group of academics and experts in the field of human trafficking published a letter to Ambassador John Miller, Director of the Office to Monitor and Combat Trafficking in Persons at the U.S. State Department (<http://www.genderhealth.org/pubs/LtrMillerTrafficking.pdf>). The letter outlined the groups concerns about the assertion as fact that there is a link between trafficking and prostitution, and challenged much of the research and data the U.S. position is based on.

⁸⁵ Section 98D Crimes Act 1961, Trafficking in people by means of coercion or deception. The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.

14 Conclusion and Future Review

The PRA has been in force for five years. During that time, the sex industry has not increased in size, and many of the social evils predicted by some who opposed the decriminalisation of the sex industry have not been experienced. On the whole, the PRA has been effective in achieving its purpose, and the Committee is confident that the vast majority of people involved in the sex industry are better off under the PRA than they were previously.

However, progress in some areas has been slower than may have been hoped. Many sex workers are still vulnerable to exploitative employment conditions, and there are still reports of sex workers being forced to take clients against their will. Nevertheless, it is encouraging to note that most sex workers contacted during the research for this report were aware of their right to say 'no', and that some brothel operators' behaviour in this respect has improved since the enactment of the PRA.

It is a truism that traditions and attitudes developed over many years cannot be changed overnight. The Committee acknowledges that there remains disapproval and dislike directed by some people at people who work in the sex industry and mistrust and suspicion directed at the authorities by some people in the sex industry. In this atmosphere, the Committee believes that a period of relationship building will be necessary before the rights and responsibilities of those in the sex industry will be fully realised. People working in the sex industry, and those working in organisations that deal with the sex industry, need to make positive efforts to work together. The recommendations in this report reflect this view.

The Committee does not consider further review of the operation of the PRA is necessary at this stage. However, because the current review has been undertaken a relatively short period after decriminalisation, and because some of the anticipated changes in the industry have been slow to eventuate, the Committee is of the view that an assessment of the impact of the PRA should be carried out at a later date. By 2018, fifteen years after its enactment, the longer-term impact of the PRA will be much clearer. Such a review should include an assessment of whether the PRA is achieving its purpose, if any unintended consequences have arisen (either positive or negative), and if the PRA requires amendment.

The research done for the Committee's review and this report may act as baseline data for any future review. The Committee's recommendations regarding ongoing monitoring of the numbers of sex workers in New Zealand (see chapter two) will also facilitate any further assessment of the impact of the PRA.

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Appendix 1

Prostitution Law Review Committee Members

Paul Fitzharris O.N.Z.M. – nominated by the Minister of Police (Chairperson)

Paul Fitzharris retired from the NZ Police in 2001 as an Assistant Commissioner. During the latter part of his career he was Acting Deputy Commissioner. He has been a member of the Legal Aid Review Panel, and conducted a number of reviews for government agencies in respect of emergency management, search and rescue and a review of the Cook Islands Police. He is a board member of Orana Wildlife Park, Christchurch. He is currently the Acting Chair of Land Transport New Zealand and Patron of New Zealand Neighbourhood Support.

Catherine Hannan – nominated by the Minister of Justice

Catherine Hannan, DOLC, is a Sister of Compassion. She has a background in education, development and the social sciences and is currently on the team at the Suzanne Aubert Compassion Centre, popularly known as the Wellington Soup Kitchen. Sister Catherine is Chair of the Board of Caritas Aotearoa New Zealand, an agency for development, justice and peace. Her particular interest is human rights.

Debbie Baker – nominated by the Minister of Justice

Debbie Baker is the manager of Streetreach, a confidential support service for those involved in prostitution. She has a wide knowledge of the sex industry through working with those in the industry both in England and in New Zealand. Streetreach has been in operation in New Zealand since 2000 and is an initiative of The Life Centre Trust, a charitable trust based in Auckland that exists to make life better for those in the community. Ms Baker joined the Committee in June 2007, filling a vacancy held since May 2006.

Matt Soeberg – nominated by the Minister of Health

Matt Soeberg has a strong background in public health policy. He is currently a PhD candidate at the Health Inequalities Research Programme, Wellington School of Medicine and Health Sciences, examining ethnic and socioeconomic trends in cancer survival rates. He is also a senior analyst at the Cancer Control Council of New Zealand. He has worked for the Special Programme on Environment and Health, World Health Organisation Regional Office for Europe. Mr Soeberg has also worked at the Auckland Regional Public Health Service, the New Zealand AIDS Foundation and the Ministry of Health. His interests are in social epidemiology, public health policy and law, health inequalities and health impact assessment.

Sue Piper – nominated by the Minister of Local Government

Sue Piper was a Wellington City councillor for nine years and a member of Local Government New Zealand's National Council for three years. In 1995, she was a member of the NGO Co-ordinating group preparing New Zealand's NGO presentation at the 1995 Conference on Women. Ms Piper is currently the Executive Director of the Wellington Region Foundation. She is also the Chair of the Local Government Commission and a board member for Quotable Value.

Karen Ritchie – nominated by the Minister of Commerce

Karen Ritchie has been working for the NZ Aids Foundation for the past four years. Her experience in the sex industry spans many years as a tax paying worker and small business owner. In May 2006, Ms Ritchie spoke at the Harm Reduction Conference in Vancouver about her personal experience of criminalisation and decriminalisation whilst in the industry. She is the founder of the Cartier Bereavement Charitable Trust in Auckland, which assists with funeral costs for those who have passed on from an HIV/AIDS related illness.

Mary Brennan – nominated by the Minister of Commerce

Mary Brennan has over 20 years experience in people management, including ten years in restaurant management in both New Zealand and the UK. For the past ten years Ms Brennan has managed brothels. She has developed and written a user friendly job description and interview booklet for sex workers. Her main areas of interest are training, communication and human rights. Ms Brennan now works as a private sexuality consultant.

Sue Crengle – nominated by the Minister of Women’s Affairs

Dr Sue Crengle has a Bachelor of Human Biology, Bachelor of Medicine and Bachelor of Surgery, and Master of Public Health from Auckland University. She has medical speciality qualifications in General Practice and in Public Health Medicine. Dr Crengle has previously worked as a Medical Officer Special Scale in Auckland Sexual Health Services. She is currently employed as a Senior Lecturer in Te Kupenga Hauora Māori, Faculty of Medicine and Health Sciences, University of Auckland. She is also the Director of Tōmaiora Māori Health Research Centre.

Catherine Healy – nominated by the New Zealand Prostitutes’ Collective

Catherine Healy B.A., Dip Tch. is National Co-ordinator of the New Zealand Prostitutes' Collective. She has sat on a wide range of expert committees, and is frequently sought by national and international groups for advice on issues affecting sex workers.

Lisa Waimarie – nominated by the New Zealand Prostitutes’ Collective

Lisa Waimarie has worked for the New Zealand Prostitutes’ Collective for 10 years, initially joining the organisation as a volunteer, and then becoming the Regional Coordinator of the group’s Dunedin branch. She has also been the Coordinator for a local HIV/AIDS support group. Both of these organisations are part of a larger collective called the Working Together Group - a collective of Dunedin HIV/AIDS education, prevention and support groups that work together to organise annual events aimed at promoting community awareness of this issue. Ms Waimarie was the Event Coordinator for the Working Together Group for seven years.

Jan Jordan – nominated by the New Zealand Prostitutes’ Collective

Dr Jan Jordan is currently Senior Lecturer in the Institute of Criminology, Victoria University of Wellington. She became interested in researching prostitution over 20 years ago while studying women’s involvement in crime in nineteenth century New Zealand. Dr Jordan later compiled a book of interviews with women working in the contemporary sex industry (*Working Girls*, Penguin Books, 1991). Since then she has conducted a small research project with the clients of sex workers and compiled a literature review on the New Zealand sex industry for the Ministry of Justice (2005).

Former Committee Members

The position currently filled by Debbie Baker was previously occupied by Alan Bell, the then Director of ECPAT NZ Inc, and prior to that by Susan Martin of ECPAT who sadly died soon after resigning in 2004.

Appendix 2

Glossary of Terms and Abbreviations

ACC	Accident Compensation Corporation
ASBO	Anti-Social Behaviour Order
BLA	Business Licensing Authority
CJRC	Crime and Justice Research Centre, Victoria University of Wellington
CMC	Criminal Misconduct Commission
Committee	Prostitution Law Review Committee
CPTED	Crime Prevention Through Environmental Design
CSOM	Christchurch School of Medicine
CYFS	Child Youth and Family Services
CYPF Act	Children Young Persons and Their Families Act 1989
DLA	District Licensing Authority
EFTPOS	Electronic Funds Transfer at Point of Sale
ERA	Employment Relations Act 2000
GST	Goods and Services Tax
HRC	Human Rights Commission
HSE	Health and Safety in Employment Act 1992
INZ	Immigration New Zealand
IRD	Inland Revenue Department
IYB	Independent Youth Benefit
LCQ	Liquor Controller Qualification
LGA	Local Government Act 2002
LG and E Committee	Local Government and Environment Committee
LGNZ	Local Government New Zealand
MCC	Manukau City Council
MCC Bill	The Manukau City Council (Control of Street Prostitution) Bill
MPA	Massage Parlours Act 1978
NGO	Non-Governmental Organisation
NZPC	New Zealand Prostitutes' Collective
OSH	Occupational Safety and Health
OSH Guide	A Guide to Occupational Health and Safety in the New Zealand Sex Industry
PRA	Prostitution Reform Act 2003
RMA	Resource Management Act 1991
SOOB	Small owner-operated brothel
TA	Territorial Authority
WINZ	Work and Income New Zealand
YCD	Youth Cultural Development