

NEW ZEALAND'S PROSTITUTION REFORM ACT 2003

- what did it change and what has happened since?

as of August 2006, collated by Tim Barnett MP

The Prostitution Reform Act 2003 was designed to:

- safeguard the human rights of sex workers and protect them from exploitation;
 - promote the welfare, occupational health and safety of sex workers; *and*
 - improve public health in the area of prostitution
- through a decriminalized environment for sex work focused on harm minimization, while offering no moral endorsement of prostitution.

This document looks at the previous law, the content of the law reform and what has happened since under the following headings:

A The sex worker and sex industry

- A1 Coercion
- A2 Contractual responsibilities
- A3 Media advertising
- A4 Soliciting

B The state

- B1 Benefit law
- B2 Conditions of employment and of health and safety
- B3 Health promotion and safer sex

- B4 Immigration provisions and trafficking
- B5 Local Government
- B6 Monitoring and researching the impact of the law
- B7 Police
- B8 Registration etc of sex workers and operators

C Society

- C1 Numbers of sex workers
- C2 Street work
- C3 Young sex workers

It uses the following acronyms:

- NZ – New Zealand
- NZPC – New Zealand Prostitutes Collective
- PLRRC – Prostitution Law Reform Review Committee
- PRA – Prostitution Reform Act

| Heading | The law before June 2003 | What the Act says | What has happened |
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| A The sex worker and sex industry | | | |
| A1 Coercion | <p>The Crimes Act criminalised “<i>inducing sexual connection by coercion</i>” but did not specifically cover the sex industry and was rarely if ever used in that context. The maximum penalty was 5 years.</p> <p>The criminalization (i.e. prohibition) of prostitution nurtured gang involvement, as happened in relation to alcohol supply during Prohibition.</p> | <p>The PRA created a new crime of “<i>coercing someone to provide sexual services</i>”, with a maximum penalty of 7 years.</p> <p>The PRA encourages the development of smaller, worker-run prostitution operations in which gang involvement is much more difficult to sustain.</p> | <p>Anecdotal reports indicate that the previously common (and coercive) practices of bond payments by sex workers to operators, and fines imposed on sex workers by operators, are now under sustained challenge. Some complaints of coercion have been made by sex workers to the Police.</p> <p>There has been no evidence of any increase in gang involvement.</p> |
| A2 Contractual responsibilities | <p>A contract between a client or operator and a sex worker was normally held by courts to be illegal and unenforceable on the basis that prostitution was contrary to public policy.</p> | <p>Contracts can be formed both between operator and sex worker, and between client and sex worker, affecting such matters as employment and payment.</p> <p>The PRA creates a specific right for a sex worker to refuse to provide, or to withdraw from providing, a sexual service for any reason (typically fear of the behaviour of a client). Reasonable reimbursement must be provided to the client.</p> | <p>Sex workers now have access to the Disputes Tribunal (formerly small claims court) in relation to contractual matters, and have made use of this course of action.</p> |

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| A3 Media advertising | <p>There were no specific controls on the advertising of prostitution services, although the essential illegality of the sex industry meant that it was a fraught and complex area.</p> | <p>The PRA bans the advertising of prostitution services on radio or television, and places restrictions on the appearance and placement of print media advertisements. This was because decriminalization unrestrained by such provisions would have automatically allowed such promotion.</p> | <p>The ban and controls have been in place, with no negative reports.</p> |
| A4 Soliciting | <p>Soliciting was a crime with a maximum fine of \$200, resulting in 354 arrests in the 5 years before law reform. The arrests were usually of street workers (although the law also applied to massage parlours). They sometimes involved Police entrapment operations, and those arrested were disproportionately Maori/Pacific or pre-operative transgender, (i.e. legally male).</p> <p>An arrest followed by a fine could have further consequences, for example if the sex worker refused to pay or wanted to obtain a mortgage or travel to some countries.</p> | <p>Soliciting is no longer a crime and remains not subject to zoning or bans on soliciting in certain locations.</p> <p>The Summary Offences Act remains in existence, to deal with harassment of the public or other offensive behaviour in public by sex workers.</p> | <p>The arrests have ceased and police time has been saved.</p> <p>Under the Clean Slate Act, which came into effect in 2004, sex workers with a criminal conviction (usually soliciting) are eligible to apply to a judge for that conviction to be removed from their criminal record. His provision applies to all convictions for offences which are no longer an offence</p> |

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| B The state | | | |
| B1 Benefit law | <p>Prostitution was not considered a valid work area by Work and Income NZ, the state employment agency, although there were reports of the option being offered to some people who were in receipt of benefit.</p> | <p>The PRA created a new legal status for prostitution. Two specific policy commitments were obtained in the course of the law passing:</p> <ul style="list-style-type: none"> • prostitution would not be promoted as a valid work area by Work and Income NZ, given the ethical issues this would raise; and • anyone choosing to leave prostitution would be entitled to receipt of a benefit immediately rather than after a stand-down period without benefit. | <p>The PRA is working as intended.</p> |
| B2 Conditions of employment and of health and safety | <p>Sex workers had no ability in law to work under an enforceable employment contract, since the person identifying as the employer would be vulnerable to conviction for "living off the earnings" of prostitution. Thus bonding and fines imposed by employers were effectively impossible to challenge.</p> <p>Given the uncertain legal status of the sex industry, and the consequent absence of clear lines of legal responsibility, it was not covered by any effective and enforceable health and safety standards. There was no involvement by the Government's Occupational Safety and Health service.</p> | <p>With decriminalization, the sex industry now operates under the same employment relations, and health and safety, rules as any other industry.</p> <p>The law opens the option for sex workers to be employed under an employment contract, with all the protections that can bring. It also allows challenges against unacceptable employment practices.</p> <p>The sex industry formally came under the coverage of the Occupational Safety and Health service, in the same way that all other industries are.</p> | <p>Sex workers have been seeking advice from NZPC and others about their new employment options. Some brothels have developed employment contracts for their staff. Some sex workers have complained about specific conflicts with their employers to the (Government-operated) Labour Inspectorate and Mediation Service, and have settled after mediation. One trade union has targeted membership recruitment within the sex industry, with some success.</p> <p>Occupational Safety and Health have produced <i>Guidelines to Occupational Health and Safety in the New Zealand Sex Industry</i>, in consultation with the NZPC, to act as a voluntary code for operators. A mandatory version would be the next stage, if complaints justify the need.</p> |

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| B3 Health promotion and safer sex | <p>No public health obligations existed for operators, clients or sex workers. Indeed, the Police were liable to seize condoms after arrests of sex workers for soliciting as evidence of prostitution-related activities. The Ministry of Health had funded the NZPC for their sexual health work since 1997, but otherwise the relationship between the public health sector and sex workers was occasional.</p> | <p>Owners and operators of businesses of prostitution are liable for fines of up to \$10 000 if they do not take all reasonable steps to ensure that safer sex is practiced in their businesses. Sex workers and clients are liable to a fine of up to \$2 000 if they do not take all possible steps to ensure the practice of safer sex.</p> | <p>The Ministry of Health, working closely with the NZPC, has produced safer sex and general health promotion posters, leaflets and stickers for use and display in the industry. Sex workers have reported to NZPC that those resources have been useful in convincing some clients to use condoms and other safer sex equipment. A client who ripped a condom off during intercourse with a sex worker has been convicted under the PRA, being fined \$400 plus costs of \$130.</p> <p>Nationwide, a total of 60 health inspectors and equivalent have been granted powers in relation to sex industry premises. The Ministry of Health's compliance and enforcement policy has been established and is contained in Appendix 9 of the <i>Health Enforcement Policy Investigation and Prosecution Guidelines</i>. 5 formal complaints have been received under the PRA.</p> |

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| B4 Immigration provisions and trafficking | <p>There was no law or policy specifically banning people holding temporary work-related visas from working as sex workers.</p> | <p>The law specifically prevents people on temporary visas from working in the sex industry, people applying for permanent residence from doing so on the basis that they will be undertaking sex work, and people applying for residence on the basis of business investments which they have undertaken doing so if their investment is in the sex industry.</p> | <p>The new immigration rules seem to be working well, and the Immigration Service has conducted some raids of brothels on the basis of the new rules. NZPC have a concern at the Service's respect for the privacy of migrant workers discovered in such raids.</p> <p>There is no evidence of trafficking.</p> |
| B5 Local Government | <p>There was no special role for local bodies. Brothel (massage parlour) location was covered by normal resource consent procedures, and in effect brothels had uncontrolled location rights within commercial zones.</p> | <p>Local bodies were given three new powers in relation to the sex industry –</p> <ul style="list-style-type: none"> i) to create by-laws to define the areas in which brothels could be located (while recognizing that the general law does not render prostitution illegal, so a total ban on brothels would not be appropriate); ii) to be able to consider factors other than specific physical impact (e.g. parking, noise) when considering brothel location; <i>and</i> iii) to produce specific controls for signage advertising sex industry services. | <p>17 of the 74 local bodies in NZ have drafted and implemented special by-laws. (Their nationwide representative body Local Government NZ has produced model by-laws and guidelines relating to the PRA).</p> <p>Following legal challenges supported by the NZPC, the High Court has overturned by-laws created by three different urban local bodies. They had attempted to severely restrict brothel location and outlaw small owner-operated brothels. The Court held that such policies were not within the spirit or intention of the PRA.</p> |

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| <p>B6 Monitoring and researching the impact of the law</p> | <p>The old law, contained in a variety of individual Acts of Parliament, was not reviewed or reformed for a generation. Minimal research had been conducted on New Zealand's sex industry.</p> | <p>The process of law reform involved 15 years of campaigning followed by three years of legislative process. That included hours of Parliamentary time and many days of Select Committee time, including hearing hundreds of public submissions. That sparked a major and ongoing public debate on the issue of prostitution.</p> <p>The PRA established a Review Committee – the PLRRC – to research the impact of the law from the point when it had been in for three years – i.e. June 2006 – to June 2008, and then report to Government and Parliament. The Committee is comprised of representatives of key relevant sectors:</p> <ul style="list-style-type: none"> • Sex workers • Sex industry operators • Health • Women • Maori • Justice, and • Local government <p>with an independent chair.</p> <p>The PLRRC has to:</p> <ul style="list-style-type: none"> • Assess the impact of the PRA on sex worker numbers; • Assess interventions available to assist people to avoid or cease working as sex workers; • Evaluate the operator certification system; • Generally review the operation of the PRA. | <p>The PLRRC was established in December 2003, within 6 months of the PRA coming into effect. Its Chair is Paul Fitzharris, a retired Police Commissioner. It has been meeting since March 2004, with servicing and research backing from the Ministry of Justice.</p> <p>The Crime and Justice Centre at Victoria University of Wellington is coordinating an evaluation framework for the PLRRC. Additionally, a major one year (June 2006 to June 2007) research project is being undertaken by the Christchurch School of Medicine, funded in part by the Health Research Council and the Ministry of Justice, to <i>explore the health and safety practices of sex workers following the enactment of the PRA; to assess whether those practices have changed from those in use prior to the PRA.</i></p> <ul style="list-style-type: none"> • |

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| B7 Police | <p>The Police were the major point of contact between the state and the sex industry. The potential for corruption arose from this relationship, and allegations were made from time to time. (It should be noted that the corrupt relationship between the sex industry and the Police was the major driver behind the decriminalization of prostitution in New South Wales, Australia).</p> | <p>The role of the Police in relation to the sex industry was restricted to the enforcement of laws around genuinely harmful activity such as coercion and being the client of a sex worker aged under 18.</p> | <p>The relationship between the Police and the sex industry has improved markedly. For example, Police operations around two recent murders of sex workers in Christchurch – both of which were rapidly followed by arrests – were noticeable for the warm cooperation between them and sex industry leaders.</p> <p><i>The Police Manual of Best Practice</i> has been updated to include a chapter on Prostitution.</p> <p>The Police have voiced some concern that the cessation of the registration and licensing schemes has reduced their level of contact with the sex industry, which could make the building up of intelligence more difficult.</p> |

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| <p>B8 Registration etc of sex workers and operators</p> | <p>Each massage parlour (i.e. brothel)-based sex worker had by law to be registered with the Police; occasional Police checks on the parlour's records were made.</p> <p>In the south of the North Island and in the South Island the Police also established a non-statutory registration scheme for escorts, with the local media refusing advertisements from individual escorts unless they were registered on the scheme. There were repeated reports of significant breaches of privacy arising from this scheme.</p> <p>All employees of massage parlours had to be licensed; many were not, and the monitoring and enforcement process was poor.</p> | <p>The PRA contains no registration schemes for sex workers.</p> <p>The operator of each larger brothel (where more than three sex workers are based) has to be certified. This is a paper-based and court-administered scheme. A violent or sexual offence would normally disbar someone from holding a certificate.</p> | <p>The massage parlour worker registers have been closed and mostly destroyed. The NZPC is disputing the Police decision to keep the old records in some areas.</p> <p>The Police registration scheme for escorts has been closed and Police report that the records have been destroyed.</p> <p>No harm has been reported as a result of the cessation of registration of some sex workers. Police checks – required for some sensitive categories of jobs – no longer reveal that the person being checked once worked as a sex worker.</p> <p>To date, 15 people had been refused a certificate.</p> |

| C | Society | | | |
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| C1 | Numbers of sex workers | <p>Reports based on regular and comparable NZPC counts of the number of “adult entertainment” advertisements in certain print media and the web indicate an increase in the numbers of sex workers from the early 1990s onwards in spite of criminalization being in place. There is strong evidence that the sex industry is demand-driven, with demand influenced by factors such as tourism numbers, care in the community policies, levels of affluence and the existence of alternative leisure options.</p> | <p>The PLRRC is required to initially total and then monitor trends in the number of sex workers.</p> <p>The PRA does nothing to influence demand for the services of adult sex workers.</p> | <p>The PLRRC has developed a model to compute numbers and trends, which is being implemented. The NZPC count of adult entertainment advertisements indicates a modest reduction in numbers since law reform. The Chair of the PLRRC has stated that it is too soon after the implementation of the PRA to tell what impact it has had on numbers.</p> |
| C2 | Street work | <p>Street workers were banned from working in massage parlours (brothels) if they had a prostitution or drug conviction.</p> | <p>The ban on street workers with prostitution or drug convictions working in brothels was dropped. The option for the creation of “safe houses” for street workers and their clients to use opened up with decriminalization.</p> | <p>To date the creation of “safe houses” (which occurred in Sydney, New South Wales, after a similar decriminalization) has been thwarted by brothel zoning by-laws in some urban areas, and the lack of entrepreneurial initiative.</p> <p>The legal status of street work, and the demand by some for more state controls over it, has become the major focus of continuing debate over the law reform.</p> |

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| <p>C3 Young sex workers</p> | <p>The emphasis was on prosecution rather than protection. Sex workers aged under 18 could be and were charged with soliciting. The resultant conviction acted as a barrier to leaving prostitution.</p> <p>The Crimes Act was amended in 2000 to criminalize the clients and operators of sex workers aged under 18, although clients could use the defence of thinking on "reasonable grounds" that the sex worker was aged over 18. The maximum penalty for clients was 5 years imprisonment; the young sex worker was not criminalized. There were no convictions under the law before June 2003.</p> | <p>The minimum age for prostitution remains at 18 (the general age of consent for sexual contact is 16). The maximum penalty for the clients and operators of sex workers aged under 18 increased to 7 years imprisonment, and the "reasonableness" defence was removed. The young sex workers remains uncriminalised and did not face a legal obligation to provide documentation on proof of age to the Police.</p> | <p>The focus of state and voluntary agencies is on protecting young people from the harmful effects of prostitution.</p> <p>The Police are responsible for the enforcement of this aspect of the law. They have initiated 22 prosecutions of clients and have achieved 7 convictions. Sentencing has included periods of imprisonment. Pressure on the Police to test their new powers in relation to the clients of street workers remains strong.</p> |