

Is It Working?

An evidenced-based review
of the decriminalisation of
prostitution in New Zealand

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Acknowledgements

This report was prepared using replies to Official Information Act requests (OIAs) made by Auckland researcher Tony Pitt. It was compiled with the support of Stand Against Sexual Exploitation (SASE) United Kingdom, and Family First New Zealand. SASE and Family First are separate entities, and the views of one should not be taken as the views of the other. For the purposes of this report, the views and analysis contained within are those of the researcher. Any factual errors are the responsibility of the researcher.

This review is primarily concerned with the prostitution of women and girls. We recognise that male and transgender prostitution deserve to be included, along with international human trafficking, however these issues are outside the scope of this report.



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1. Executive Summary

In 2003, New Zealand changed its laws on prostitution to decriminalise virtually every aspect of the industry. The international community has been fascinated by the policy change, which has been widely lauded. This report challenges the assumption that the law reform was a success, revealing a huge gap between the reputation of the law and its actual impact.

When implementing the Prostitution Reform Act 2003 (PRA), Parliament was clear that its impact should be fully scrutinised; in particular, that the number of women in the industry should be monitored. In reality, however, there has been very limited monitoring of the impact of the law, with contradictory information regarding the number of people involved. Harm is still present in the industry.

In 2008, five years after the law was implemented, a review was carried out to determine how well it was working; resulting in the Prostitution Law Reform Committee (PLRC) report.¹ It recommended assessing the new law again in 2018, when the longer-term impact would be much clearer: to see if the Act had achieved its purpose, and whether it needed further amendment.² Such an assessment never happened – and the Ministry of Justice has recently advised that there are ‘no plans to review the operation of the PRA at this time.’³

Much of what has been written about the impact of the New Zealand law has not been based on factual data. To correct this, the researcher behind this report made multiple Official Information Act (OIA) requests over several years, and gathered other evidence, to ascertain the true effects of the decriminalisation model. What emerged was this: the benefits from the change in the law have been exaggerated, while its shortcomings have been ignored, denied or hidden. A key example was the prediction that street prostitution would reduce after the law reform; as late as 2017, the New Zealand Prostitutes’ Collective (NZPC) was still maintaining that this was indeed the case. In fact, the collective’s own reports showed there had been a significant increase.

The main reason for the misinformation about the impact of decriminalisation is the fact that the conversation is dominated by the New Zealand Prostitutes Collective. The Government relies overwhelmingly on this lobby group for information regarding any issue related to prostitution.

The NZPC has always advocated for normalising prostitution as ordinary ‘work’. It does not provide support for those wishing to exit, has no contact with the black market of prostitution - at least not officially - and plays down the industry-wide realities of violence and exploitation. The normalisation agenda is promoted using tactics such as reframing the collective’s services as ‘business support,’ denying the existence of trafficking and under-age abuse, rejecting the voices of exited women, amplifying the voices of pimps, glossing over the fact that women do not report violence and exploitation, and promoting the legislation as a success while failing to mention that there has been little to no monitoring of it.

1 New Zealand Government Ministry of Justice, ‘Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003’ (May, 2008). This report is known, and referred to in this document, as ‘the PLRC’

2 Ibid., p168

3 OIA dated December 24, 2018, to the Ministry of Justice; see Appendix 2 for details of all OIAs

Several areas which have been either neglected or misrepresented in other reports are outlined in this review. In summary:

1.1 Increased numbers of people in prostitution

While solid data is lacking, it appears that not only has the promised reduction in numbers following the law reform failed to materialise, there has in fact been a marked increase in the number of people involved in prostitution. The number of street prostitutes in Auckland, for example, has increased ten-fold.⁴

The NZPC has failed to collect accurate data on the numbers of people involved in prostitution, despite being contracted by the Government to do so. Numbers have not been proactively monitored since the law reform, save for the 2007 research by the Christchurch School of Medicine (CSOM),⁵ which found 2,332 people prostituting across five main centres.⁶ This was likely to be an under-estimation and did not take into account the constant movement in and out of prostitution, the black market, nor those who are not in contact with the NZPC. The NZPC itself reported engaging with 7,416 prostitutes in the first half of 2019⁷ - more than three times the figure quoted by the Prostitution Law Reform Committee (PLRC)'s report in 2008.

1.2 The failure of the NZPC to fulfil its Government contract

Under its contract with the Ministry of Health, the New Zealand Prostitutes' Collective is supposed to gather evidence-based data such as the numbers of complaints, referrals and concerns raised by women in prostitution. In 2010, as part of the on-going contract, the collective agreed to collect data on how the law reform was operating in the long term. This was to identify significant trends and to verify whether the law needed to be further modified. However, the collective has not carried out its duties. The NZPC has never collected or reported on any of the required data, and OIA requests have confirmed that the Government does not monitor the contracted performance of the NZPC.

1.3 Health and safety – and the reality of violence

While the NZPC has done some good work educating prostitutes on health issues and legal rights, a range of health and safety violations are still occurring within the industry. These include coercion into unwanted sex acts, high levels of violence, physical injury, unsafe sex, and exploitative practices such as long hours.

Violence is a risk every prostitute takes on a daily basis: assault, rape and strangulation are not uncommon. Fuelled by increasingly violent pornography and a notorious drinking culture, punters frequently enjoy hurting women; overseas studies show that some men think raping a prostitute is not even possible. As a result, studies continue to document depression, post-traumatic stress disorder (PTSD), anxiety disorders, dissociative disorders and bipolar disorder in women involved in prostitution.

⁴ The NZPC Jan-July 2019 report stated there were 2601 prostitutes in Auckland

⁵ Gillian Abel, Lisa Fitzgerald and Cheryl Brunton, 'The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers' (2007), University of Otago, p34. In this document, this report is also known as the 'CSOM' (Christchurch School of Medicine) or 'CSOM 2007'

⁶ Ibid., Auckland, Wellington, Christchurch, Hawkes Bay, Nelson

⁷ NZPC Report to the Ministry of Health for Jan-Jun 2019, p17

Yet New Zealand's official Health and Safety Manual for prostitution normalises violence and coercion by advising prostitutes to 'identify potentially dangerous situations,' and to devise strategies 'to protect themselves.' The prostitutes' collective stated openly in 2016 that it was impossible to wipe out violence in the industry.⁸ In other words, despite the fact that support for the 2003 reform was based largely on the idea of reducing harm for those selling sex, it is widely acknowledged that eliminating the greatest risk is impossible.

1.4 Brothel Inspections: mandated but not happening

Despite the fact brothel inspections are required under the law, there have been none carried out in the main centres of prostitution (Auckland, Wellington and Christchurch) – at least, not in the period up to 2015.⁹ Only 11 brothel inspections were made across the whole of New Zealand in a decade.¹⁰ Public health service managers were in fact advised not to be proactive in relation to conducting investigations,¹¹ and an OIA in 2018 revealed that no funding had been assigned to carrying out inspections.¹²

1.5 Low rates of reporting and prosecuting violations

The law reform seems to have had very little effect on the rates of reporting violence and abuse, a fact readily admitted by the Prostitution Law Reform Committee in 2008.¹³ Fewer than 20% of those who had been physically assaulted reported it to the police.¹⁴ Women continue to avoid reporting violations to authorities - and instead simply move establishments.

Since 2003 there have been only two prosecutions for 'inducing or compelling sexual services', i.e., coercion, despite repeated reports that it happens frequently. There have also been two successful court cases regarding sexual harassment towards women in prostitution. The NZPC's six-monthly reports to the Ministry of Health make frequent mention of violence and coercion, often by brothel 'managers' (pimps), but these incidents have not been investigated or followed up.

1.6 The black market

The industry realities of gang involvement, child exploitation and internal trafficking are largely denied or ignored by the NZPC. Some acknowledgement of under-age involvement and the abuse of migrants has appeared in the collective's six-monthly reports,¹⁵ but they have admitted¹⁶ having no contact with the black market. So while New Zealand's black market for prostitution has been well documented by local media, and noted in multiple *US Trafficking in Persons* reports,¹⁷ the extent of the problem remains unknown.

8 Anna Reed, 'Foreign Prostitutes Heading to NZ Illegally' 4 June 2016 <https://www.rnz.co.nz/audio/player?audio_id=201821623>

9 DHB replies to OIA dated Jan 2015

10 OIA Jan 2015 to the New Zealand District Health Boards

11 PLRC (2008), p53

12 OIA April 2018 to Minister of Health

13 PLRC (2008), p8

14 Ibid., Table 11 p56: 19.2% reported physical assault and 32% reported rape (sample size of 769)

15 NZPC reports to the Ministry of Health obtained by OIA (see details in Appendix 2)

16 PLRC (2008); also in NZPC's six-monthly reports to the Ministry of Health

17 USDS, 'Trafficking in Persons Report: New Zealand' (2004-2020), United States Department of State

There is little to no support for under-age girls coerced into prostitution and exploited by gang members. An OIA to the Ministry for Children confirmed that under-age prostitution was not a target area and that no funding had been made available to tackle it.¹⁸

In relation to the trafficking and exploitation of illegal migrants, the NZPC is calling for reform of the law to legalise migrant prostitution, claiming this would lead to better protections. The PLRC's 2008 report, however, found that even local prostitutes rarely reported violence, despite the fact they were already protected by the law.

Immigration officers are the only officials who can enter any premises – for example, to make a surprise visit relating to deportation. However, until about 2017 they did so almost solely in response to complaints. Tip-offs regarding impending raids are also known to occur.

1.7 Lack of support for exiting the industry

No funding has been allocated to supporting women who wish to exit the industry. When the law reform was being debated, it was promoted as helping to prevent entry and facilitate exiting,¹⁹ but the NZPC - which receives substantial annual funding - does not support an exiting approach.²⁰ The committee reviewing the law in 2008 stated that 85% of respondents did not want to stay in prostitution.²¹ This is likely to be an underestimation because many women contemplate exit only when given the hope that it is really possible, often through appropriate service provision.²² Similarly, an OIA revealed that there is little support for NGOs to carry out prevention.²³

18 OIA dated 17th January 2018 to the Ministry for Children

19 Hansard, 'Prostitution Reform Bill - Second Reading' 19 February, 2003 <https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030219_00001132/prostitution-reform-bill-second-reading>

20 OIA dated 24 Jan 2018 to the Ministry of Social Development

21 PLRC (2008), Table 13: only 15% expected to remain in prostitution more than five years

22 R. Matthews, H. Easton, L. Young, J. Bindel, 'Exiting Prostitution : A Study in Female Desistance' (2014)

23 OIA dated 24th Jan 2018 to the Ministry of Social Development

2. Introduction

The Prostitution Reform Act 2003 was presented to Parliament on the premise that it would improve the circumstances of women involved in prostitution. The law passed with only a slight majority, and many of the people who voted for it sincerely believed it would deliver on the promises made by its advocates.²⁴ Because of this, an obligation to review the impact of the law was built into the legislation. In 2008, the Prostitution Law Review Committee (PLRC) reviewed the law and made 28 recommendations.²⁵ The review was seen as largely positive, a fact reported internationally and reflected in academic opinion.

Reality, however, did not match the reputation. The tone and conclusions of the PLRC report did not accurately reflect the rather more complicated picture revealed by the data – or by the lack of data. There was no data on the black market; women were still being coerced into taking clients when they didn't want to; and reporting incidents of violence and coercion seemed no more likely under the new law.²⁶ The gap between the substance and the conclusions of the report was pointed out by the UK Home Office:

*'The [Prostitution Law Review Committee (PLRC)] concludes that they are 'confident the vast majority of people involved in the sex industry are better off under the PRA than they were previously' (PLRC, 2008:168). This message has been widely publicised, but without the substantial caveats that more detailed reading of the report and evaluation studies reveals.'*²⁷

The Prostitution Law Review Committee was set up as part of the PRA 2003, with a statutory requirement to review the law after five years. This review took place in 2008, with the committee making 28 specific recommendations regarding the prostitution industry. A major thrust of our evaluation of the reform was to seek the answer to a critical question: what happened to those recommendations made to Government 12 years ago? It is clear they have been ignored. One of the recommendations, for example, was to conduct a further review of the PRA in 2018, but two OIA requests confirmed this would not happen. A review of the 2008 recommendations and the failures to implement them is contained in Appendix 1 of this report.

In this context, it is hard to justify any claims about the 'success' of the law: the impact of it has simply not been monitored. A hands-off approach to prostitution has meant no robust research or monitoring of the industry, including zero solid data on the inherent exploitation and abuse. In effect, the absence of any evidence-gathering has been interpreted to mean that there is in fact no evidence of harm to gather. This simply does not follow.

24 Hansard, Prostitution Reform Bill - Third Reading, 25 June, 2003 <https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030625_00001319/prostitution-reform-bill-procedure-third-reading>

25 PLRC (2008), p18-19

26 Ibid., p58

27 Liz Kelly, Maddy Coy and Rebecca Davenport, 'Shifting Sands: A Comparison of Prostitution Regimes across Nine Countries' (2009), p50

3. Background To The PRA 2003

Prior to the 2003 law, prostitution was legal but soliciting in public places was not. Massage parlours were prosecuted for prostitution offences, and were forbidden to employ women who had been convicted of prostitution or drug offences.²⁸ Those working in street prostitution were subject to harassment and prosecution. Nevertheless, women involved in prostitution had access to rights and support, particularly in relation to healthcare. In 1987, amidst concern about the spread of HIV/AIDS, a small group of women involved in prostitution founded the New Zealand Prostitutes' Collective (NZPC). The Labour Government's then Minister of Health, Helen Clark, approved funding for the group as part of a national strategy to combat the disease. As well as seeking to educate and inform those in prostitution, the NZPC took an ideological stance: aiming to decriminalise prostitution and form what they coined the 'sex industry.' Along the way, members of the collective compiled the basic terms and clauses of what would eventually become the Prostitution Reform Bill, introduced in late 2000 by MP Tim Barnett.

The NZPC would evolve to become not only a support organisation but also a powerful lobby group. From its inception, it took the ideological stance that prostitution should be fully decriminalised and set out to achieve this. The collective is set up as a charitable trust but often presents itself as a union for women involved in prostitution. It has enormous influence over Government ministries and effectively leads the way in policy development and provision for women involved in prostitution.

The NZPC receives \$1.1 million per annum in funding from the Ministry of Health, but there is very little scrutiny of where this money goes. While it claims to be a not-for-profit organisation, it is known to charge for various items, such as condoms and lubricant, until challenged; these products are already paid for by its Government funding. The collective's activities are limited, and it is noticeably hands-off with regards to trafficking, child sexual exploitation and those wishing to exit the industry.

In terms of lobbying activities, the NZPC has had almost total success in positioning and legitimising prostitution as mere 'work'. However, in contrast to the collective's original aims:²⁹

1. it remains illegal to have unsafe sex
2. it remains illegal for migrants on temporary visas to be involved in prostitution in New Zealand

These restrictions in the law are critically important if one wishes to understand the actions of the NZPC and the relevant ministries since the bill was passed. For instance, the restriction imposed regarding migrants is the reason the NZPC is, at present, vigorously canvassing for overseas prostitutes to be allowed to come to New Zealand to work in the industry on temporary visas.³⁰

28 A history of the laws relating to prostitution can be found here: <https://www.parliament.nz/en/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand#:~:text=Introduction,been%20illegal%20before%20the%20PRA>

29 Originally the NZPC wanted to fully decriminalise prostitution such that prostitution would be liable only to the normal law of the land. Unsafe sex and temporary migrants working in the industry would therefore have been legal. Currently, due to these remaining restrictions in the PRA, prostitution in New Zealand is not actually fully decriminalised, despite being incorrectly labelled as such

30 Catherine Healy, Ahl Wi-Hongi and Chanel Hati, 'It's Work, It's Working: The Integration of Sex Workers and Sex Work in Aotearoa/New Zealand' (2017), Women's Studies Journal

Even with these compromises, the law passed with a majority of only one vote, with one abstention. There was not a consensus;³¹ many members voted for it only because they sincerely believed it would lead to fair treatment for women in prostitution. This was not surprising given the rhetoric. During the debate, MP Tim Barnett identified the problems he saw with the existing law, clearly implying they would be addressed by the proposed reform:

The list includes operators, usually men, using emotional or physical force to control sex workers; under-18-year-old sex workers being sought by clients; prostitutes being trapped in the sex industry; the absence of any buy-in to common health and safety standards; offensive signage; and brothels being located in sensitive places.³²

He also stated specifically, during the second reading, that one of the jobs of the PLRC – the committee charged with reviewing the law – would be to examine how the Government could both deter people from entering prostitution and make it easy for them to leave it.

Instead of addressing these issues, however, what followed was a laissez-faire approach to the industry – aside from a push to normalise it and to promote full decriminalisation – and a failure to monitor or implement provisions to address exploitation and abuse. In 1997, the NZPC was given a contract by the Ministry of Health to promote health and safety. After the law reform, the contract was changed to include clauses covering the promotion of decriminalisation – under the guise of health and safety benefits. As such, the NZPC has been sanctioned to promote decriminalisation while at the same time failing to address the very real concerns about prostitution that were raised in Parliament.

Some politicians were aware of the fundamental intention of the bill to normalise prostitution, for example, MP Brent Catchpole:

‘...I include in that [referring to criminals] the New Zealand Prostitutes’ Collective, which is an organisation championed by the Prime Minister and funded by the Government. It is the prime target – the one organisation that is out there promoting prostitution and recruiting young people into it, under the guise of providing them with a service.’³³

MP Stephen Franks summed up many of the elected members’ concerns:

‘There is nothing in this bill that changes the protection of the human rights of any prostitute. There is nothing that protects them from exploitation...

‘...The other significant change will be the abolition of the law against pimping. When people tell me that this change in the law somehow enhances the power and the ability of the prostitute to stand up to the boss, I am genuinely disgusted. If there is one factor of international experience, it is that prostitution is associated with brutal men who exploit women, who live off their earnings, and who keep them in a form of slavery...

31 ‘Prostitution Law Reform in New Zealand’ New Zealand Parliament, 10 July 2012

32 Hansard, ‘Prostitution Reform Bill’ Third Reading, 25 June 2003 <https://www.parliament.nz/en/pb/hansard-debates/rhr/docume nt/47HansD_20030625_00001319/prostitution-reform-bill-procedure-third-reading>

33 Ibid.

'...where the pimp is not afraid of any police action. Because that is what the change does. At the moment, the brothel-keeper and the pimp are well aware that they are breaking the law. They are breaking the law more readily than the prostitute, because the only liability that the prostitute faces is for hard-sell marketing.

'...The proponents of this bill decided that they not only would put no capacity in the police hands, but also would take away the existing powers that they have.'³⁴

It is notable that the comments above regarding criminal elements were later confirmed by the committee which reviewed the law five years on.³⁵

In light of these objections, a review of the law was a very important aspect of its implementation. The committee charged with doing so consisted of MPs and representatives from several organisations. The NZPC was invited to nominate three members of the committee, which meant they retained substantial influence, the review function of the committee was biased in favour of the NZPC's agenda.

Together, the review committee commissioned research projects to assist them. By far the most significant was the report produced by the Christchurch School of Medicine in 2007.³⁶ This work formed the basis of the committee's report released the following year: the 'Prostitution Review Committee's Report on the Operation of the Prostitution Reform Act' (PLRC 2008). Although heavily biased in favour of the law, it highlighted some important issues and recommended changes be made to the operation of the new legislation. As mentioned, these recommendations have not been implemented.

³⁴ Ibid.

³⁵ PLRC (2008) Item 6.1 The Brothel Operator Certification System. Comment: '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.'

³⁶ CSOM 2007, G. Abel et al. Note that most of the survey work undertaken for this report was carried out by, or in partnership with, the NZPC: the questionnaire development, data collection and interviews

4. Promised vs Actual Benefits Of Law Reform

4.1 Promises

It is now apparent that the PRA 2003 was falsely represented to Parliament as legislation intended to improve the health and safety of women involved in prostitution. As MP Stephen Franks pointed out during the debate,³⁷ if the intention of the new law was truly about the health and safety of the women, the decriminalisation of sale would have been effective. This would have created a law which simply eliminated prosecution for those selling sex. Instead, the law effectively legalised pimping and demand/purchase. In addition, there was a complete failure to implement any recommendations arising from the largely flawed review of the law in 2008. Instead, the Government has allowed a system of self-regulation. This has been rejected in other jurisdictions, such as the UK,³⁸ because they recognised that it would allow for unfettered exploitation and harm.

Certain promises were made while debating the implementation of the law which have since been ignored:³⁹

1. 'To examine how the Government and the community can best deter people from entering prostitution and make it easy for them to leave it, if they choose.' This has simply not been done, despite being the main driver for reform.
2. 'Under-age sex is best controlled by stronger law against the client - law that can actually be enforced.' The police have not been enforcing the law and cannot question sex workers⁴⁰ about their age.
3. 'Exiting from prostitution is best controlled by a combination of good social policy, such as the provision in the bill to minimise benefit stand-down periods to people leaving the sex industry and some great on-the-ground social work projects.' There is in fact very little provision for exit.
4. 'The bill gives local bodies the power to control that signage' and, 'local bodies will have more controls over brothels in the area' by preventing brothels being located in sensitive places.
5. 'For sex workers, the world will change dramatically if this bill passes into law.' In particular:
 - a. 'Key to this will be a transformation of their relationship with the State'
 - b. '.... they will be under a public health umbrella'
 - c. 'They will have the opportunity for an employment contract,'
 - d. 'the certainty of an Occupational Safety and Health Service code, and a safer sex-focused environment to work in.'
 - e. '...a stronger law against coercion.'
 - f. 'Workers aged under 18 will not be criminalised, but their clients will face longer sentences than under the current law, with less opportunity to successfully defend themselves.'

37 Hansard, 'Prostitution Reform Bill - Second Reading. 19 Feb' (2003) <https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030219_00001132/prostitution-reform-bill-second-reading>

38 L. Kelly et al. 'Shifting Sands' (2009)

39 https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030625_00001319/prostitution-reform-bill-procedure-third-reading

40 'Sex work' is a euphemism which normalises prostitution and obscures its harms, so we have endeavoured to use alternative terminology. However, we have retained the term in direct quotes and, on occasion, when referring to other documents

These changes have not happened in practice. In general, the law has simply resulted in impunity for clients and pimps, with very few checks and balances, along with a black market which is not policed, about which the prostitutes' collective knows little.

Table 1: Promised vs Actual Benefits of the PRA

Area of Control	Before PRA	Theoretical after PRA	Actual Practice after PRA	Comments
People in prostitution	Prostitution criminalised/ treated punitively	Prostitution (sale) decriminalised	Prostitution (sale) is decriminalised	This aspect of the law has benefited those in prostitution
Violence	No control	No control	No control	No change or worse now pimping has been made effectively legal. Police respond only if a complaint is made, but women do not complain because they fear publicity or being penalised by clients/ pimps. They may simply move to a different brothel.
Coercion	Police had authority over pimps	Coercion is illegal, punishable with up to 7 years imprisonment	Pimping is effectively legal and often involves coercion with impunity	Police have no jurisdiction. Pimps are in control and frequently coerce women to have unsafe sex and to accept drunk clients. Women do not report due to the fear of being penalised by clients/ pimps.
Control of pimps	Police had jurisdiction	No control	No control	Procurement and pimps are outside the law (except for controlling those under-age). However, under-age persons cannot be challenged about age.
Control of massage parlours / brothels	Police could enter premises	Police could enter only if they had a warrant	Only immigration officials have ready access to premises	Police totally constrained because they cannot enter brothels without a search warrant, except to check liquor licence.

Area of Control	Before PRA	Theoretical after PRA	Actual Practice after PRA	Comments
Immigration control	Police could enter premises	Illegal for migrants on temporary visas to prostitute	As of 2018, no effective control	Police cannot enter brothels; immigration officers can, but brothels are often warned about a raid. A growing problem given 20% estimated as illegal migrants.
Employment contracts	None	Contracts in place that protected women	Ineffective	Few meaningful contracts; most workers subcontract, but they are still subject to abuse from pimps
OSH code	None	Safe sex manual produced	Safe sex manual produced	Comprehensive manual produced. The NZPC has also produced a more practical pamphlet.
Safer sex	NZPC education. But possession of condoms could result in prosecution	Clients must use condoms by law	Clients legally required to use a condom. May not happen in practice.	NZPC education for workers. But some workers are still coerced into unsafe sex, usually by the operators. Only one known client prosecution for refusal to co-operate.
Brothel inspections by Ministry of Health officials	None as brothels were illegal (although happened in practice)	Conditions in brothels were to be monitored	Only a few inspections were carried out immediately after the law was introduced.	By 2014 only 11 brothels had been inspected in the whole of NZ in the previous 10 years, and none were done in Auckland, Wellington or Christchurch.
Under-18-year-olds (classed as victims)	Under-age could not be prosecuted	No change: could not be criminalised before or after the law reform	Under-age cannot be prosecuted	Under-age girls coerced into prostitution are treated solely as victims of abuse. The fact they are involved in the industry must be taken into consideration.

Under-18 client prosecution	Police had jurisdiction to intervene	Remains illegal and should be policed	Prosecutions rare, police cannot check age of girls	Police action is severely constrained because they cannot verify age and can enter brothels only to check liquor licences. Prosecutions are rare, sentences are minimal.
Public health	Public health available	No change	No change	Health treatment has always been available to sex workers as NZ citizens.
Street work	Illegal to solicit	Reduction in numbers promised. No restriction on soliciting or prostitution	Numbers have greatly increased, Nuisance to residents. Under-age have few protections.	Generally agreed that PRA has failed. Previously fear of prosecution provided peer pressure to control nuisance. Police cannot question age of workers. The PRA promotes 'opportunistic' prostitution and easy access for young people.
Local body control of brothel location	No control	Local bodies to control	Hands-off approach	Control of location has been limited

4.2 Failed recommendations

In 2008, the law review committee made several recommendations in order to address some of the failures of the new legislation.⁴¹ These are detailed in Appendix 1. In summary, the shortcomings were:

1. A failure to monitor numbers of women in prostitution and to maintain a database of street-based prostitutes
2. A failure to provide funding to the Ministry of Health to enable Medical Officers of Health to carry out regular inspections of brothels
3. A failure to make adequate funding available for the establishment/continuation of NGOs which could provide a range of services to the prostitution industry, including assistance with exiting for those who wish to exit
4. A failure to develop a stronger certification system – one which includes an inspection before a certificate is issued
5. A failure to increase funding to support those who are under-age and to focus on prevention
6. A failure to take measures to improve best practice in relation to employment conditions, particularly in relation to the right to say 'no'.

5. The Political Context

5.1 Political ideologies

The debate relating to prostitution policy tends to centre on whether the demand side of prostitution should be decriminalised or legalised. In general, everyone agrees on the decriminalising of sale. Decriminalisation as a policy approach was developed after legalised regimes became ghettoised, as happened in Amsterdam. The difference amounts mainly to the levels of regulation of the industry, with decriminalisation less 'official' and therefore more hands-off.⁴² It is relevant that the Netherlands intends to modify its present legal regime: prostitutes are demanding to move to a Small Owner-Operated Brothel (SOOB)-type system and for the right to book clients online, which is essentially illegal at present.⁴³

Stand Against Sexual Exploitation (SASE), a Scottish charity which aims to improve services for women exiting the industry, summarises the common arguments in favour of legalisation and decriminalisation as follows:⁴⁴

- We'll be able to see and control the abuse better because it won't be 'underground'
- It shouldn't be hard for people to engage in prostitution; doing so could turn punters violent
- We don't want to reduce the industry; women should be able to make an income
- We should normalise the industry so that people selling sex are not stigmatised

In short, the key responses to these arguments are:

- Legalisation and decriminalisation models have both demonstrated that as demand grows so does the black market, with associated exploitation and harms. Even in 'visible' and 'legitimate' establishments, it is easy to hide exploitation and to ensure that women do not report abuse for fear of repercussions.
- Making it more difficult for people to buy sex actually deters people from buying sex. This reduces the risk of harm by removing more potential perpetrators. Punters who are driven by violence are not put off either way - and the violence still occurs in legalised/ decriminalised regimes. In fact in Nordic Model countries, there are fewer instances of prostitute murder.
- The best way to help women secure a viable financial future is to help them find alternatives to selling sex, so they do not have to make that choice. If there is no alternative to prostitution, that's the problem that needs to be addressed - as opposed to simply leaving it a viable option for people who are struggling financially. Involvement in prostitution should not be inevitable.

42 SASE, 'Two Failed Experiments: How Legalisation and Decriminalisation (of Both Sale and Purchase of Sex) Are Failed Policy Regimes' Stand Against Sexual Exploitation (2019) p.5, 9

43 Geneva Abdul, 'It's Legal to Sell Sex in Amsterdam, But Don't Expect the Same Rights As Other Workers', Dispatch, February 19, 2019

44 Ibid.

- People selling sex should never be stigmatised. Many people, however, do not want to be prostitutes, and even in regulated regimes do not register as such.⁴⁵ Stigma is present no matter what the regime. It is not stigma that causes violence and other harms. It is not stigma that leaves people without alternatives. The best way to reduce stigma is to help women engage meaningfully in society through service provision, along with raising awareness of the strength and resilience of survivors.

A key aim of the NZPC and other supporters of decriminalisation is to normalise prostitution. Although some genuinely believe normalisation would improve circumstances for women by making it safer and less 'underground'⁴⁶ in nature, the economic motivations for wanting to normalise the industry are often ignored. Normalising the industry leads to less stigma for buyers, higher demand and greater profits within the industry as a whole.

In Germany, the purchase of sex is not only legal and acceptable but encouraged. For example, brothels offer flat-rate deals where men can pay a specific set fee and have sex with as many women as they like - an 'all-you-can-eat-buffet' style of promotion. Women in prostitution, however, have not benefited from a reduction in stigma through legalisation, nor have they benefitted from better protections.⁴⁷ Overall, the evidence presented in this report suggests that normalisation has not improved circumstances for women involved in prostitution.

Casandra Diamond, who experienced prostitution in Canada, expressed concern about decriminalised brothels and pimps in her TEDx talk:

They provide a façade of acceptability, safety and an option on a woman's part, but even worse, the fact that all of this happens inside a licenced system means that we are enshrining a man's right to buy a living, breathing human being.⁴⁸

Crucially, as MP Stephen Franks MP noted during the law reform debate, decriminalisation legitimises pimping:

'...We are abolishing the law against pimping, when, around the world, the activity of the pimps who enslave those who work for them, in a variety of ways, is the most exploitative element of prostitution.'⁴⁹

Further, it is questionable whether anybody seriously considers prostitution a 'job like any other.' Few would be happy to see it promoted as a career option to children. In fact, the normalisation of prostitution leads to a bizarre and dangerous situation, whereby as soon as an under-age prostitute turns 18, she is no longer considered to be a victim of abuse, but instead is an empowered 'worker'. There is no acknowledgement of the continued abuse and exploitation.

45 Geneva Abdul, 'It's Legal to Sell Sex in Amsterdam, But Don't Expect the Same Rights As Other Workers', Dispatch, February 19, 2019

46 It is not possible for prostitution to be underground, given punters need to be able to find those offering sexual services

47 Hansard, 'Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill: Oral Evidence Event' 13 Feb, 2014, pdf version p24, < <http://www.niassembly.gov.uk/assembly-business/official-report/committee-minutes-of-evidence/session-2013-2014/february-2014/human-trafficking-and-exploitation-further-provisions-and-support-for-victims-bill-oral-evidence-event/> >

48 Casandra Diamond, 'I Was Sex Trafficked for Years. Brothels Are Hidden in Plain Sight' TEDx, 12 Feb, 2020; see also Casandra Diamond, 'How I Was Recruited to Sex Trafficking' The Kit, 18 October, 2019

49 https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030219_00001132/prostitution-reform-bill-second-reading

5.2 Normalisation in New Zealand

Once the PRA bill (which was essentially written by the NZPC with assistance from the Ministry of Justice) was passed, the prostitutes' collective focused their attention on normalising prostitution. Their aim has always been to get prostitution accepted by society as a valid profession, and thereafter treated as such. Clauses in the bill, such as the legalisation of pimps, enabled this to begin immediately: overnight, pimps were transformed from criminals into respectable 'entrepreneurs,' operators and managers - and considered an asset to the tourist industry.

Today, the NZPC uses a range of tactics to promote the normalisation of prostitution. These include:

1. Providing 'business' support and an advice service for brothels. A significant section of their comprehensive website is given over to services and advice for potential and existing brothel owners. This actively supports pimping.
2. Assuming – and promoting the idea – that most women want to remain in prostitution. This means there is very little attention given to helping women to exit.⁵⁰ Even under-age girls are passed on to other authorities, as there is no contract for the NZPC to provide exiting services. There is also no housing support related to exiting, a common model in other jurisdictions.⁵¹ The NZPC uses sanitising language such as the term 'breaks from work' instead of 'attempts to exit,'⁵² and generally denies the existence of abuse and exploitation. They also refuse to talk to women about exiting, stating that it is offensive,⁵³ when in fact it has been shown that conversations about exiting are essential for helping women believe in the possibility of change and provide them with hope.⁵⁴

Statistics show that only 15% expect to stay in prostitution for more than five years.⁵⁵ The committee reviewing the law reform in 2008 found nearly 24% wanted to stay because they, 'didn't want to do anything else,' but this is not the same as saying they wanted to stay. In fact, there were numerous reasons why many of the rest needed to stay.⁵⁶ The NZPC religiously ignores any information which says women want to exit. This contradicts even the lowest estimates from other countries in which prostitution has been decriminalised, where at least 40% - but likely far more - wish to exit.⁵⁷ Women who want to leave have little to no support.

50 Julie Bindel, *The Pimping of Prostitution* (Palgrave Macmillan UK 2017) p318

51 TORL, 'Turn Off The Red Light' [2020] WHP Ireland <<https://www.turnofftheredlight.ie/>>; R. Matthews et al (2014)

52 CSOM 2007, G. Abel et al. p66

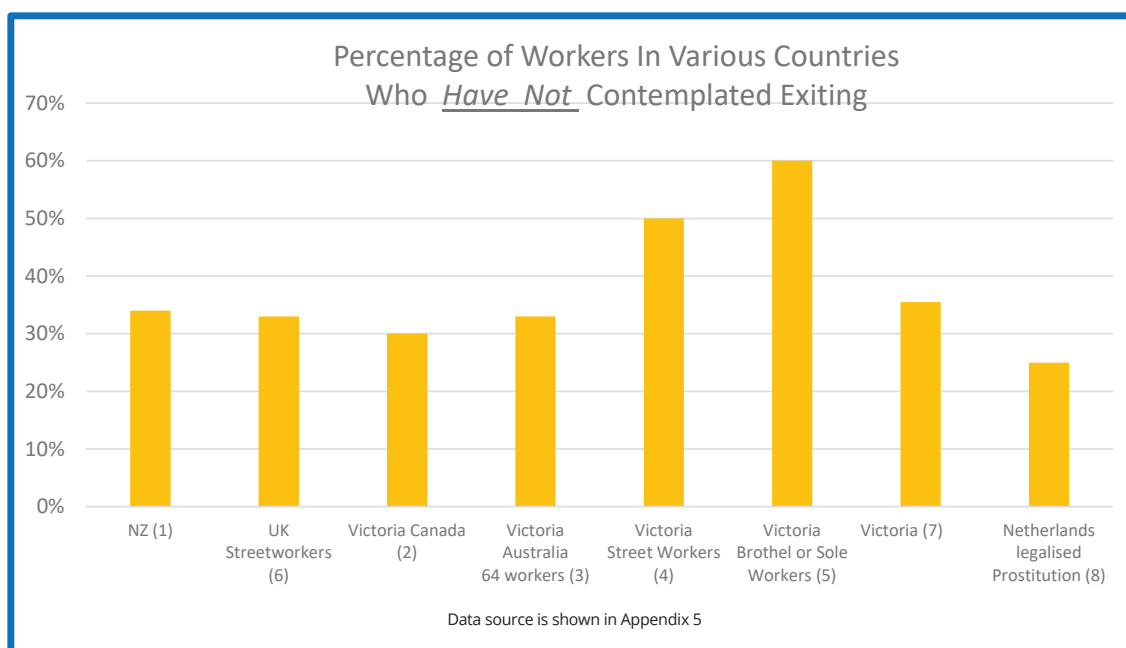
53 Elaine Mossman & Pat Mayhew, 'Key Informant Interviews, Review of the Prostitution Reform Act 2003' (October, 2007) Crime and Justice Research Centre, Victoria University of Wellington. Ministry of Justice 7.1: "It is offensive to talk about exiting – it's a right to be able to be a sex worker. We don't need rescuing"

54 R. Matthews et al (2014)

55 PLRC (2008) Table 13

56 Ibid., Table 15

57 Janice Raymond, 'Gatekeeping Decriminalization of Prostitution: The Ubiquitous Influence of the New Zealand Prostitutes' Collective,' (2018) *Dignity: A Journal on Sexual Exploitation and Violence*: Vol. 3: Issue. 2, Article 6



3. Rejecting the views and experiences of women who have exited prostitution, bullying and vilifying them, along with anyone who speaks out against the normalisation or recriminalisation of prostitution.⁵⁸ This includes suggesting that feminists are the ones who make women into victims, not the pimps, buyers or other perpetrators, as well as attempting to silence survivors by preventing them speaking at events.
4. Denying that sex trafficking is a problem, in spite of the USA Government reports stating otherwise, and supporting migrant involvement in the sex industry. The NZPC is vigorously campaigning to overturn the exclusion clause in the PRA which states that overseas migrants on temporary visas cannot engage in prostitution. They suggest coming to New Zealand to prostitute would be 'a wonderful holiday for immigrants.'⁵⁹ In reality, removing this clause would provide an endless source of women to feed the brothels, particularly given the demand for international women, as well as boosting online prostitution. This results ultimately in increased competition and deteriorated working conditions for all women in prostitution.⁶⁰
5. Arguing that women – including trafficked women - will be safer because they will be able to take their complaints to the police. Yet the NZPC's own survey reported that less than 20% of legal New Zealand prostitutes themselves actually reported violence or abuse to police.⁶¹
6. Misrepresenting the impact of the law, both in print and from behind a microphone. NZPC representatives speak regularly at large international conferences, expounding the success of the New Zealand decriminalisation system. They present misleading information, leaving out key facts: the lack of support for exiting, for example, along with the absence of health and safety inspections, and the lack of any evidence that the law reform has reduced coercion, violence and abuse.⁶²

58 Julie Bindel, *The Pimping of Prostitution* (2017), Palgrave Macmillan UK, p316

59 Anna Reed, 'Foreign Prostitutes Heading to NZ Illegally' (2016) <https://www.rnz.co.nz/audio/player?audio_id=201821623>

60 Lincoln Tan, 'NZ Sex Workers Lodge Complaints over Website Advertisements', NewstalkZB, 22 April, 2018

61 CSOM 2007, Table 6.4

62 Detailed in NZPC reports, such as referred to in the Jul-Dec 2014 report p5: Catherine Healy, 'It's Not What We Do But How We Do It: Occupational Health and Safety Standards for Sex Workers' [2014] International Aids Conference, Melbourne

7. Promoting ignorance and misinformation by failing to collect data. The NZPC is required, by contract with the Government,⁶³ to provide evidence-based research, such as the number of prostitutes and details of brothel operators who coerce girls to have unsafe sex, but it fails to do so. The collective also hides information. One example of this is the reality of the threat of HIV. Much has been made in the past of the fact that HIV has been contained, and the NZPC has claimed – based on the women seen at NZPC clinics – that women in prostitution have some of the lowest rates for HIV. Other figures, however, suggest otherwise; infections in 2016 were the highest ever.⁶⁴
8. Promoting the idea that prostitution will be sent ‘underground’ if it is not normalised.⁶⁵ There is simply no justification for this claim. Apart from some limitations on location, small, owner-operated brothels (SOOBs) are free of constraints and controls. Theoretically they are free of ‘managers’ and cannot be entered without a warrant unless invited, so they are exempt from inspections; only immigration officials may have access, if they have reason to suspect illegal immigrants are on the premises. In practice, SOOBs are the nearest thing possible to fully decriminalised prostitution. Hence, they are essentially unregulated and form one half of a two-tier system of prostitution in New Zealand.⁶⁶

While the prostitutes’ collective denies that gangs are involved in prostitution, media reports show gangs sexually exploit women and coerce them into prostitution⁶⁷ - and that they do it without any constraints.⁶⁸ The police are aware that the gangs keep girls in their headquarters and other gang houses⁶⁹, but, unlike their counterparts in other countries, the NZPC does not accept that gangs here are involved in prostitution. This is probably because the collective is unable to get access to them - gang houses are like fortresses, with high metal fences, dogs and firearms - and an acknowledgement of what they don’t know would weaken the image NZPC representatives have curated: that they know everything that goes on in prostitution. Their reports say simply that, ‘the young people the NZPC has been in contact with are not controlled by gangs.’⁷⁰

In a report on migration to New Zealand, researchers found the ‘most vulnerable migrant sex workers were not accessible to us in person,’⁷¹ demonstrating that there was still ‘underground’ prostitution in New Zealand.

63 NZPC Report Jul-Dec 2009 p78 ‘NZPC’s Programme Logic.’

64 Anna Loren, ‘NZ Records Highest-Ever Number of HIV Diagnoses in 2016’, Stuff, 31 May, 2017 <<https://www.stuff.co.nz/national/health/93148062/nz-records-highest-ever-number-of-hiv-diagnoses-in-2016>>

65 Mary Sullivan, ‘What Happens When Prostitution Becomes Work’ CATWA (2005).p.4. State endorsement of prostitution intensifies the commodification of women’s bodies and greatly expands the illegal, as well as legal, sectors of the industry. In effect, Victoria has created a two-tiered system - a regulated and an unregulated prostitution industry

66 The NZPC denies we have a two-tiered system because they say it drives prostitution underground. But they forget that many Asian brothels are in reality underground as even they are not allowed access, A similar situation exists with many illegal immigrants

67 Joelle Dally, ‘Sex workers say Mob ‘owned streets’, Stuff, 11 Feb 2014, <https://www.stuff.co.nz/the-press/news/9708103/Sex-workers-say-Mob-owned-streets>

68 Harrison Christian, ‘Gang Sex-Trade Tax Probe’ Hawkes Bay Today, 21 July, 2015 <<https://www.nzherald.co.nz/hawkes-bay-today/news/gang-sex-trade-tax-probe/U2LT5BRFTNY6I4XEZHNOHCYIKU/>>; Elizabeth Binning, ‘Teen Prostitutes Pimped out by Gang Members’ NZ Herald (2008) <<https://www.nzherald.co.nz/nz/teen-prostitutes-pimped-out-by-gang-members/X4MAP273SMK54I2K2EGMA36K3U/>>

69 RNZ, ‘Brothel workers victims of human trafficking-lawyer’. <https://www.rnz.co.nz/news/national/15294/brothel-workers-victims-of-human-trafficking-lawyer>

70 NZPC report Jan-June 2010 p78

71 Gillian Abel and Michael Roguski, ‘Migrant Sex Workers in New Zealand, a Report for MBIE’ Otago University (2018) p11

The NZPC no doubt considers its denial of gang involvement appropriate given the following PLRC 2008 statement: 'While some sex workers had some association with gangs, none reported being forced into the sex industry by them.'⁷² However, while the research relied upon by the committee found that there was 'no talk in the qualitative interviews of gang involvement or coercion',⁷³ this was not surprising given the interview questionnaire did not ask any questions regarding gangs.

9. Speaking for women when in fact the women concerned have often not been consulted. In a Ministry of Justice report in 2007, researchers described interviewing 'key-informants':

'In relation to exiting, we asked informants what means of helping sex workers to exit were available in their region and what they felt was needed. The questions proved to be ones in which many informants had limited interest, or were not keen to talk about. Many within the industry did not feel it was a problem for sex workers to exit when they wanted to. For the majority of brothel operators, the issue was not how to assist sex workers to exit but how to keep them working.'⁷⁴

The 'key informants' here were actually the operators, or, in other words, pimps who had a vested interest in the women they control remaining in prostitution. This flies in the face of the NZPC mantra which insists the women are consulted on all matters. The only prostitutes interviewed for the report were self-employed women in SOOBs.⁷⁵ As self-employed prostitutes, they had some vested interest in not exiting; they were often at the high end of the prostitution market; they were not representative of the industry as a whole. The NZPC consistently amplifies the voice of pimps. Pimps take around 50% of the women's earnings and anyone exiting loses their income.

The normalisation and sanitation of prostitution is also practised by the media. Often this is because they quote or give airtime to the NZPC without investigating the veracity of the collective's statements. For example, in an *Insight* interview on Radio New Zealand,⁷⁶ the national coordinator of the prostitutes' collective, Catherine Healy, said - quoting the CSOM 2007 report - that only four percent of women involved in prostitution felt coerced or under pressure, and that only 10% wanted to leave but didn't know what else to do. While four percent was correct for those the study found were forced to enter prostitution, the real figure is much higher,⁷⁷ as this report indicates. The stated figure for those who didn't know what else to do was 17.6%, while a further 10.4% said they did not know how to leave.⁷⁸ University of Otago associate professor Gillian Abel was quoted elsewhere saying that 73% of women did prostitution work for the money,⁷⁹ however the actual figure is more than 90% - with 98.3% of streetworkers working for financial reasons.⁸⁰

72 PLRC (2008) p64

73 CSOM 2007, G. Abel et al. p79

74 Mossman & Mayhew, MOJNZ 'Key Informant Interviews' (2007), p53

75 Ibid. Appendix 1, Table 2. Of the 86 individuals interviewed for this report, only thirteen were women involved in prostitution, all self-employed in SOOBs

76 Insight, 'The Oldest Profession - A Normal Job?' Radio New Zealand, 30 October 2016 <<https://www.rnz.co.nz/national/programmes/insight/audio/201821639/insight-the-oldest-profession-a-normal-job>>. The data collection for the survey Ms Healy refers to was completed mainly by her own NZPC staff

77 See section 11.3, 'Opportunities to Exit'

78 CSOM 2007, G. Abel et al., table 5.5

79 Thomas Manch, 'New Zealand's Sex Industry Model "as useful as a burst condom"' 15 October, 2017, Stuff <<https://www.stuff.co.nz/business/industries/97760559/new-zealands-sex-industry-under-fire-as-nzpc-celebrates-30th>>

80 CSOM 2007, G. Abel et al. Table 5.5

More importantly, it was the NZPC which actually conducted the interviews for the 2007 study, so it was unlikely to be truly representative of the realities of prostitution.

In 2020, researcher Nathalie Thorburn found child sex-trafficking was prevalent in New Zealand, with children as young as 12 exploited for money and drugs, but again the NZPC downplayed the situation in the media:

‘National Coordinator for the Prostitutes’ Collective Catherine Healy says sex trafficking is a catch-all phrase that does not fully describe the situation.’⁸¹

Newshub reported that while Healy took the issue of exploitation seriously, she warned of a difference between sexual abuse and sex trafficking. Referring to a case where a nine-year-old girl was forced into the sex trade by her mother, Healy told the reporter:

‘Let’s not conflate it with sex work and say “oh, they’ve been trafficked into sex work” when actually they’re being abused by family members.’⁸²

5.3 Failures to report, monitor and remedy

The NZPC, the Ministry of Health and other Government departments promised to work together to ensure that the PRA 2003 had a positive impact. The prostitutes’ collective has a contract with the Ministry of Health to undertake a number of tasks and the Government then has specific duties to monitor the impact of the law and the state of the industry.

In 2009, in order to clarify the terms of the contract, the collective developed and agreed upon an additional contract specification. Designated the ‘Programme Logic model,’ it included an extensive range of activities, along with several levels of required outcomes.⁸³ The list below shows some of the critical data that the NZPC itself specified and agreed to report on, ie. the evidence-based data it is required to collate according to its contract with the Ministry of Health.

The collective was required to document:

- Trends in complaints received by the NZPC from prostitutes
- Number of requests to NZPC for assistance with specific issues or concerns
- Number of referrals of prostitutes to other agencies
- Summary of complaints received by other agencies (e.g., Medical Officers of Health, Police, local councils, etc.) conveyed to the NZPC
- Percentage/number of people in prostitution who believe there will be no negative repercussions from others (e.g., Government agencies, brothel owners,) as a result of them exercising their rights
- Percentage/number of prostitutes who have raised concerns with their employer
- Percentage/number of prostitutes who feel supported to refuse a client
- Information received from OSH, Medical Officers of Health and public health services, territorial authorities or other regulatory authorities that provide information about complaints received

81 ‘Prostitutes’ Collective Questions Report on Child Sex Trafficking in NZ’ 5 Oct, 2020, Newshub, accessed 7 October, 2021 <<https://www.newshub.co.nz/home/new-zealand/2017/09/prostitutes-collective-questions-report-on-child-sex-trafficking-in-nz.html>>

82 Ibid.

83 NZPC Report Jul-Dec 09 p75

- Percentage/number of prostitutes who report fewer violent or adverse incidents [the use here of “fewer” demonstrates the bias; it should be trends of all incidents]
- Percentage/ number of prostitutes who have refused a client
- Percentage/number of people in prostitution reporting having to pay bonds or fines
- Percentage of convictions under the PRA
- Number of investigations – (obtained from the police or Ministry of Justice)⁸⁴
- Number of prosecutions – (obtained from the police or Ministry of Justice)⁸⁵
- Any decrease in the number of prostitutes who report being coerced
- Percentage/number of prostitutes self-reporting improvements in all areas of their lives

Aside from the fact that this list presupposes women will continue to be exploited or abused in prostitution (for example, by only ‘reducing’ the numbers who are coerced), important requirements are missing:

1. Data on exiting. The Ministry of Health/Justice should have insisted that this data be included, given they contracted the NZPC as their source of data on prostitution and the fact provision for exiting was a main consideration of the PRA 2003. This should include numbers who have successfully exited.
2. Information on under-age girls in prostitution. In view of the seriousness of this as a criminal offence, it is a major omission from the specification of requirements.
3. Details of the brothel inspections NZPC staff carry out themselves.
4. A summary of health and safety hazard reports in the brothels inspected, and the progress brothels make to prevent re-occurrences.
5. Names of brothels who do not allow the NZPC to make an inspection.
6. Percentage/number of women involved in prostitution with addictions, along with the types of addiction.
7. Information regarding contagious diseases found in their clinics.

Designed as a framework for future health and safety standards and other amendments to the PRA law, the primary purpose of the ‘Programme Logic for NZPC’⁸⁶ was to highlight critical trends in prostitution. As an example, a clause specified in the table called, ‘Legislative Compliance: collaborating with central and local government agencies and wider stakeholders to ensure the legal rights of sex workers as defined in law are upheld’ stated its purpose was to ensure ‘sex workers work within the protection of the law.’⁸⁷ The data to be reported was the ‘decrease in the numbers of sex workers who report being coerced.’

However, no meaningful data stipulated by the Logic programme has ever been provided. The NZPC’s reports use vague comparisons such as ‘some,’ a ‘large number,’ an ‘increased number’ - without quantification. Invariably they quote a percentage and omit the datum that it refers to,

84 NZPC Report Jul-Dec 09, p84

85 Ibid.

86 Ibid., Programme Logic p78

87 Ibid., Programme Logic p85

rendering it meaningless. Overall, the NZPC has failed to collect any meaningful data, despite being responsible for monitoring the performance of its contracts. Neither have the Ministries taken any action to correct this, as an OIA in 2018 showed.⁸⁸

Ironically, the NZPC states that any criticism of the PRA 2003 must be supported by evidence-based information.⁸⁹ This is a case of the pot calling the kettle black, because, as this document proves, they do not report any meaningful data themselves. There is a total absence of the critical information they agreed to obtain under contract. They do collate data which supports other services they provide: for example, data related to needle exchange and to supplying condoms and lubricants. This data is used to justify the sales of the lubricant they manufacture. They also conduct regular 'self-appraisals' for the health education and other services they provide.⁹⁰ There is a total absence, however, of the critical information they agreed to obtain.

It is significant that following a petition on sexual exploitation and a subsequent select committee submission⁹¹ on prostitution in November 2013, the content and coverage of the NZPC's six-monthly reports to the Ministry of Health changed significantly.⁹² Such were the changes that the revised reports did not contain any factual or specific information, and there were no comments at all on violence or coercion by operators, etc. Instead, the reports referred to training, and conducting 'education on reducing and resolving issues of violence and coercion'. An exception was the July – Dec 2015 report which made a vague reference to actual breaches.

In the revised report format, the information supplied to support the contract payment of some \$1.1m p.a. was reduced to four line-items: salary-related costs, direct costs, indirect costs and workforce development. There was no breakdown of how these costs were incurred. By any standard, this information is insufficient to justify payment of the contract. The Ministry of Health department 'sector' is responsible for monitoring contracts but in an answer to an OIA, the Ministry admitted it did not monitor this contract.⁹³ Hence the Ministry failed to do anything with even the small amount of data it received.

It has become apparent that during the long-term relationship between the Government and the NZPC, the ideology of the prostitutes' collective regarding the industry has become ingrained in Ministry of Health thinking. This has resulted in the Ministry's lack of accountability: a) not acting on the contents of the NZPC reports, and b) ignoring the fact the reports do not conform to their contract with the collective.⁹⁴

Close examination shows that two NZPC reports submitted for 2013 were completely identical in all respects,⁹⁵ except for an additional last page for the six months to December 2013 giving

88 OIA dated 14th May 2018 to the Ministry of Health, Sector Operations

89 Barnett, T., Healy, C., Reed, A., & Bennachie, C., (2010). 'Lobbying for decriminalisation', published in Abel, G., Fitzgerald, L., & Healy, C., (Eds) 'Taking the crime out of sex work: New Zealand sex workers fight for decriminalisation' Bristol, Polity Press, p 57-73; Catherine Healy et al. 'It's work, it's working: The integration of sex workers and sex work in Aotearoa/New Zealand' Women's Studies Journal, Volume 31, Number 2, December 2017: 50-60 <http://www.wsanz.org.nz/journal/docs/WSJNZ312HealyWiHongiHati50-60.pdf>

90 A typical comment from Report July Dec 2015: "NZPC has surveyed 43 random sex workers advertising around the country during this reporting period, and found that 100% of those surveyed had had contact with NZPC. Of those who had had contact with NZPC, 100% said that NZPC services were useful."

91 Petition 2011/60 of Elizabeth Subritzky on behalf of Freedom from Sexual Exploitation, submission to The Justice and Electoral Committee 2013

92 NZPC Report Jan-June 2014

93 Ministry of Health OIA response, dated June 2018

94 NZPC Report 8th Jul-Dec 2009; Programme Logic p78

95 The OIA accompanying the supply of the hard copy reports to December 2013 included a table to clarify that Document (Report) 1 was actually for the period of July-Dec 2013, but the date on its face page was 1 January - 30 June, 2013, i.e., it had been incorrectly titled. Document 3 (report 3) had on its face page 1 Jan -30 Jun, 2013. A copy of the table is provided in the Appendix

different figures in the 'Actual Budget' column. In other words, the whole report was simply duplicated, submitted to and accepted by the Ministry, without this being picked up. The collective's funding for July-Dec 2013 amounted to \$540,801.⁹⁶

Referring to the success of the NZPC's lobbying to promote prostitution as work, which resulted in both the law reform itself and the biased PLRC review of it, researcher and psychologist Melissa Farley wrote:⁹⁷ 'The New Zealand Ministry of Health accepted information about prostitution almost exclusively from the NZPC rather than from less biased sources.'

Media stories appear frequently around the world about high-profile leaders and politicians who are linked to prostitution. Although it cannot be speculated who may or may not have a vested interest in taking a hands-off approach to prostitution in this country, the known links between the industry and people in power, along with the extent of exploitation revealed by the #MeToo movement, should indicate complacency is likely. The women involved in prostitution should be at the centre of law and policy making, instead of simply supporting the exploitative system which surrounds them – a system which potentially involves those in positions of power. The failure to properly monitor the industry, and the willingness to allow a lobby group to take responsibility for reporting on the impact of the law reform, should give cause for concern.

96 NZPC Report Jul-Dec 2013

97 Farley, M. 'Theory versus Reality: Commentary on Four Articles about Trafficking for Prostitution' (2009), Womens Studies International Forum

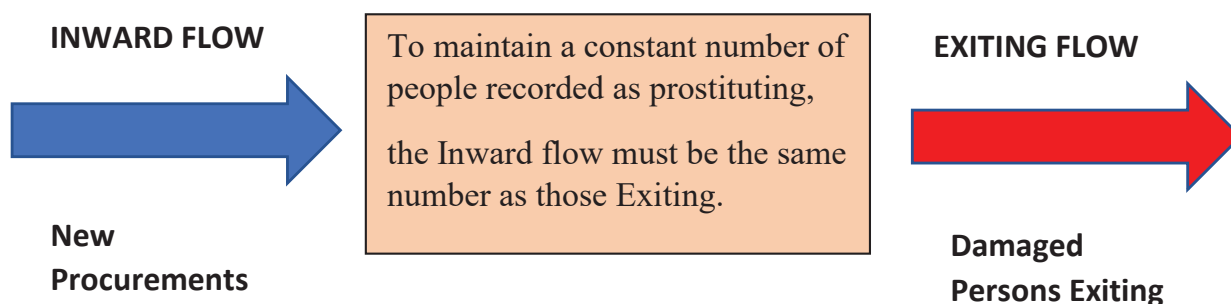
6. Tracking The Number Of People Involved In Prostitution

The Prostitution Law Review Committee stated clearly why monitoring the numbers of people working as prostitutes was of utmost importance: evaluating the trends of those entering or exiting the industry benefited any future assessment of whether the PRA was achieving its purpose.⁹⁸

The PLRC's 2008 report found there were 2,332 'workers' in prostitution across five cities – a figure established by the prostitutes' collective when undertaking paid research for the Christchurch School of Medicine⁹⁹ and provided to the Ministry of Justice in 2012 for its report.¹⁰⁰ Up until about 2015, 2,332 was the collective's go-to statistic when asked about prostitution numbers.

However, this often-quoted figure does not take into account several factors:

1. Women who are not in contact with the NZPC, who work online or in the black market¹⁰¹
2. Migrants working illegally in prostitution (the NZPC estimated these to be approximately 20% of the total)
3. The flow of women entering and exiting prostitution means that for numbers to remain constant, there must be more women involved in prostitution than provided by a numerical count at any one time (see the diagram below)



The often-quoted total of 2,332 also differs markedly from that found in one of NZPC's more recent reports. Historically the collective does not mention actual counts, but in 2019 they

quoted the number of workers with whom they had engaged 'to develop their personal skills' – a phrase denoting individuals – as 7416.¹⁰² The flow in and out of the industry has been overlooked when estimating the numbers of women involved in prostitution. In spite of the difficulty and lack of support, some do manage to exit. This means that for the numbers to remain stable, new women must be recruited to replace those who managed to exit.

98 PLRC (2008), Section 14, 'Conclusion and Future Review'

99 The Christchurch School of Medicine data and numbers were in fact collected by the NZPC staff as part of the CSOM research at a cost of \$665,606. Ref OIA May 18th 2018. The numbers were recorded over a statistically short period and are not considered very sound, but have generally been accepted as indicative

100 From 'Prostitution law reform in New Zealand', New Zealand Parliament' July 2012: "The NZPC in 2010 said there were an estimated 400 street-based sex workers nationwide, though any estimate needs to be treated with caution due to the often temporary and sporadic nature of work. More recently, it has reported no apparent increase in the number of street-based sex workers (and sex workers in general) within Christchurch, Wellington and Auckland. [48]" Endnote [48] states: "Report of the Prostitution Law Review Committee, p.118; and information supplied to the author by the NZPC, 7 June 2012."

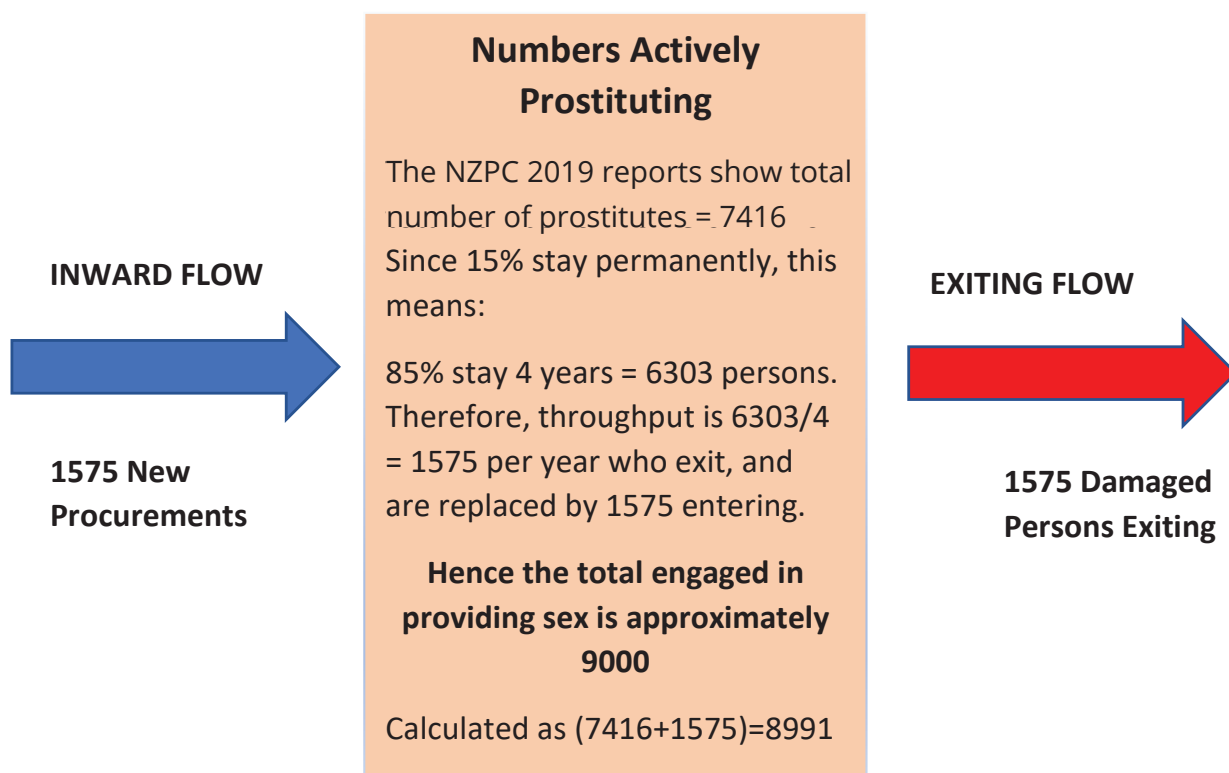
<https://www.parliament.nz/en/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand>

101 The NZPC does not have access to many Asian brothels and numbers of foreign prostitutes are unknown, although there is certainly a black market. Gill Bonnett, 'NZ Sex Workers Undercut by Illegal Foreign Prostitutes' RNZ, 31 May, 2018 <<https://www.rnz.co.nz/news/national/358658/nz-sex-workers-undercut-by-illegal-foreign-prostitutes>>

102 NZPC Report Jan-Jun 2019, p17. This is a significant difference in spite of the fact the 2332 total was for only five major cities

Hence to arrive at a total number for those impacted by prostitution, the flow of the women in and out of the industry must be included. This increases the total number by more than 21% over a physical count.¹⁰³ The PLRC refers to the CSOM 2007 survey which states that half the participants had taken ‘breaks’¹⁰⁴ rather than attempting to exit the industry, confirming that this flow is not just theoretical.

The diagram below estimates the numbers exiting the sex industry every year at around 1,575. This number has been arrived at by taking four years as the average time in prostitution (the mean is three to five years, according to the NZPC’s own assessment) and takes into account the 15% who state they wish to remain in prostitution.¹⁰⁵ Based on this data, and the NZPC’s count two years ago of 7416,¹⁰⁶ it is likely that some 9000 women are involved in the process of prostitution. This will be an underestimation since it does not take into account those not included in the NZPC count.



The reality, then, of more than 1500 women flowing through the industry and exiting every year, should be cause for concern. This is an annual figure. Many of these women will suffer long-term effects from the trauma and abuse endured as prostitutes, often struggling to become productive, well-balanced members of society. Some suffer long-term PTSD. Even more distressing is the fact that the women who exit are replaced, in the main, by young girls, because they are the most desirable. These young women are often lonely, homeless and easily manipulated, so are sought out for grooming by pimps. These observations are supported by a comment from the NZPC:

103 An example of flow can be provided by using figures supplied by the physical count (in Auckland): “The 2007 count revealed that 86 of the 230 street-based workers in Auckland were new and 144 had been working over a year”. CSOM 2007 p55. This provides the flow as 37% (86/230)

104 PLRC (2008), 5.2.3 ‘Taking “Breaks” from the Industry’

105 Ibid., Table 18

106 NZPC Report Jan-Jun 2019, p17

‘Generally new workers are young (between the ages of 20-30 years old) and female. Approximately one third of the sex worker population turns over each year and NZPC focuses on engaging with these people prior to them entering sex work.’¹⁰⁷

Although the NZPC has a policy that ‘no one should have a list of brothels, SOOB locations, or prostitutes,’¹⁰⁸ it does in fact maintain databases of street-based prostitutes created by outreach workers in Auckland, Wellington and Christchurch. In 2013, it reported starting a database.¹⁰⁹ NZPC staff are readily in contact with women by text messaging, with several systems in place for different categories of prostitutes, including alerts to circulate the names of violent attackers. Although they do not have any official rights to enter brothels or SOOBs, and report that they are often refused entry into Asian brothels, NZPC staff visit new brothels when they become aware of them, offering women entering the industry free ‘starter kits.’ They therefore have access to significant information about numbers and practices in prostitution, at least for the women in contact with the collective. They also claim repeatedly, in their six-monthly reports, that they know virtually all brothel prostitutes, most SOOB prostitutes, and the majority of those on the street.¹¹⁰

Despite the fact that understanding the flow in and out of industry is essential to understanding the impact of the PRA, there has been no official collection of this data. In response to an OIA in 2017 requesting details of the ‘numbers of brothel-based workers and SOOBs’ per year, the Ministry of Justice replied that it ‘does not hold the information you requested.’¹¹¹ The Ministry of Health has allowed the NZPC to be negligent: the collective has deliberately failed to record data that was readily available to them, data they agreed to collect on an on-going basis.¹¹² And yet a parliamentary report produced by the Ministry of Justice in July 2012 stated that one of the three major issues associated with prostitution was the [monitoring of the] number of people involved in prostitution.¹¹³

107 NZPC Report Jan-June 2010, p28

108 PLRC 2008: item 6.6.4 makes the NZPC’s position clear, e.g., “NZPC advise that there is a considerable level of fear in sex [sic] industry that information held in registers may not remain confidential and may be misused.” There are also many anecdotal accounts of this position

109 NZPC Report Jan-June 2013 p30

110 These are the six-monthly reports the NZPC supplies to the Ministry of Health, which is supposed to monitor the work the NZPC is contracted to carry out. The contract costs the ratepayers approximately \$1.1million p.a.

111 OIA dated 31st October 2017 to the Ministry of Justice

112 NZPC Report 8th Jul-Dec 2009, Programme Logic p78. Provides the specific requirement for this information to be recorded under the NZPC contract

113 ‘Prostitution law reform in New Zealand’, July 2012, NZ Parliament website, summary <https://www.parliament.nz/en/pb/research-papers/document/00PLSocRP12051/prostitution-law-reform-in-new-zealand>

7. An Absence of Choice: Why People Enter Prostitution

Research suggests that the overwhelming majority of women involved in prostitution do so out of economic necessity (90%).¹¹⁴ The strong demand for sexual services, along with women's economic disadvantage and frequent status as sexual objects, means prostitution is overwhelmingly about the male purchase of female bodies.¹¹⁵ For a minority, the financial rewards may fund a lifestyle they find desirable, but prostitution for most women is about financial survival.¹¹⁶

The decision to enter the prostitution is rarely simple or straightforward. In a poignant example, NZPC reported that participants in the Auckland Rough Sleepers Initiative performed unsafe sex in exchange for a place to stay.¹¹⁷ Only a small percentage (15%) of people working in prostitution see it as a real career choice, with the average time in the industry three to five years and the majority wanting to exit well before that.¹¹⁸ Many who enter are unaware of the impact it will have on their lives. They are often very young and have suffered abuse from an early age. Many do not believe there is any alternative.¹¹⁹

Research commissioned by the UK Home Office in 2008 demonstrates that lack of choice and desperation for money combine to place women in contexts where they make decisions which compromise their safety or involve exploitative conditions.¹²⁰ Migrants, for example, have chosen to come to New Zealand based on promises of a normal occupation, only to find themselves inflicted with debt bondage to repay their airfares.¹²¹ They cannot be said to be acting out of any meaningful sort of choice when they are made to sell their bodies in order to repay what is often an inflated debt. Many women entering prostitution have been groomed by a pimp and are under their influence. Whilst not expressly victims, these women find themselves in an environment that is often not of their own choosing.¹²² The environment then submerges them to the extent they cannot see a way out, particularly as some have little education and limited or no experience of regular employment.

The pro-prostitution stance is that 'it's a woman's body, so she has free choice to sell herself.' Any dissent is interpreted as a failure to recognise the agency of the women involved – and is seen as offensive. Most agree that those who have been trafficked have no free choice, along with those who are under-age, but even these crimes are sometimes defended by pro-prostitution advocates: trafficking is reframed as migration or 'working holidays,' and children being abused in prostitution is termed 'survival sex.'

114 CSOM 2007, G. Abel et al.

115 Megan Murphy, 'Why Does the Left Want Prostitution to Be "a Job like Any Other"?' Feminist Current, 7 November, 2011 <<https://www.feministcurrent.com/2011/11/07/why-does-the-left-want-prostitution-to-be-a-job-like-any-other/>>

116 Ibid.

117 NZPC report July-Dec 2010 p10; Auckland Rough Sleepers was a group of Government departments and NGOs looking at the problem of homelessness

118 Mossman & Mayhew, 'Key Informant Interviews' (2007), MOJNZ; also see Section 11

119 See section 11.3, Opportunity to Exit; and section 12, The Use of Under-Age Youth in Prostitution

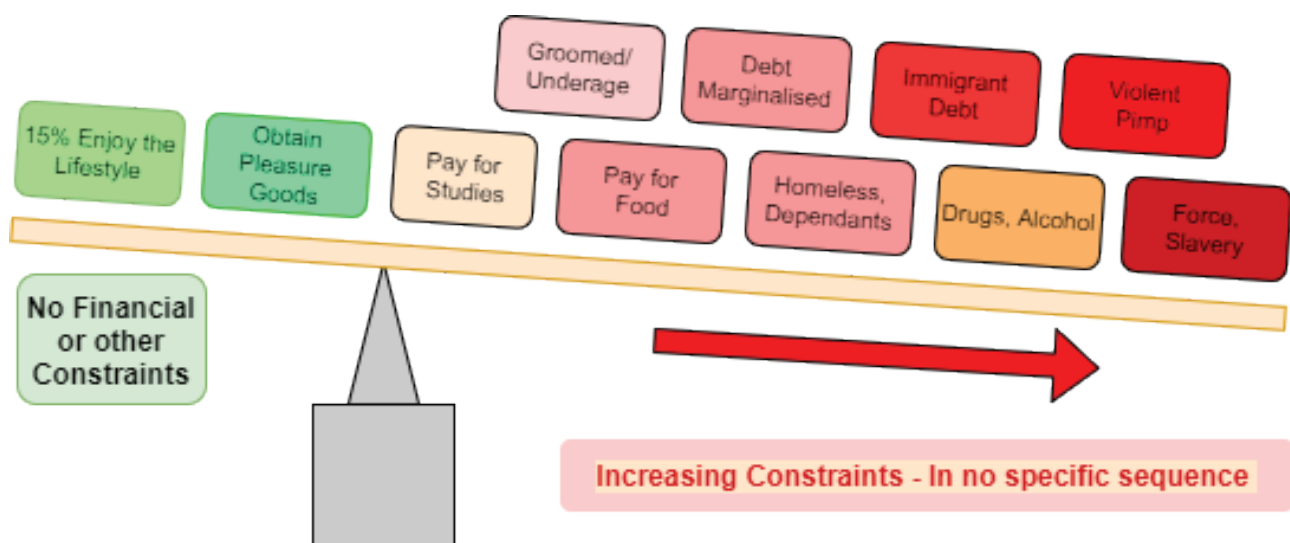
120 L. Kelly et al. 'Shifting Sands' (2009)

121 Olivia Carville, 'Exposed: The Dark Underbelly of Human Trafficking in New Zealand' New Zealand Herald, 21 Sept. 2016; 'Being Informed About People Smuggling and Trafficking', Catholic Archdiocese of Wellington website, July 2017 https://www.wn.catholic.org.nz/adw_welcom/being-informed-about-people-smuggling-and-trafficking/

122 Thomas Manch, 'No Trafficking in NZ Sex Industry but Migrant Abuse Is Widespread, Report Finds' Stuff, 17 April, 2018 <<https://www.stuff.co.nz/national/crime/103129627/no-trafficking-in-nz-sex-industry-but-migrant-abuse-is-widespread-report-finds>>

In the real world there are multiple factors which restrain people's choices. For instance, Switzerland has a policy whereby as long as women are selling sex to feed a drug habit they cannot be said to be 'freely' choosing to prostitute themselves. This is because a 'free' choice means one that is not purely based on survival/necessity but on actively wanting to be in a particular situation. The pro-prostitution lobby responds that all work is 'survival' and makes comparisons with people who work in fast-food restaurants or as cleaners, but this ignores the qualitative difference between regular jobs and the act of prostitution.¹²³ At best, this is an emotionally naïve perspective, one which ignores the testimonies of numerous women who say they experienced prostitution as a form of rape and that it should not be seen as a legitimate 'last resort' for women and girls.¹²⁴ Furthermore, no one disputes the fact that safety risks and an erosion of rights both exist to a greater or lesser degree in all prostitution regimes.

Diagram 1. Choice viewed as a continuum, showing the many pressures which impact 'free choice.'



Only a minority of women can be said to have freely chosen prostitution without significant constraints,¹²⁵ so it is inappropriate to base policy on an idealised 'voluntary' position. The ideology of completely 'free choice' is misguided - and the phrase itself a misnomer - as it considers only the two extreme ideas of 'free' vs 'coerced,' resulting in distorted policies. The PRA 2003 was based on this misguided premise and resulted in legalised pimping.

The Honeyball report¹²⁶ to the EU Parliament stated that economic problems and poverty were the main reasons women in prostitution continued selling sex. Many women in prostitution operate near the breadline: their main concerns are food, shelter and safety, which the earnings from prostitution can satisfy.¹²⁷ Having overcome scarcity, and often abuse, they may be understandably terrified that without income from prostitution, they could slide back into poverty - or into abusive situations from which many 'escaped.'¹²⁸ Hence many prostitutes are more fearful of leaving prostitution than of facing the difficulties inherent in attempting to exit,

123 Lauren Hersh, 'Prostitution Is Not Just Another Job' Huffpost, March 30, 2017 https://www.huffpost.com/entry/prostitution-is-not-just-b_9557032

124 Testimonials of various women who have exited. <https://www.spaceintl.org/about/testimonials/>

125 Roger Matthews, *Prostitution, Politics & Policy* (Routledge 2008)

126 Mary Honeyball, 'Report on Sexual Exploitation and Prostitution and Its Impact on Gender Equality' European Parliament website, 3 February, 2014. https://www.europarl.europa.eu/doceo/document/A-7-2014-0071_EN.html

127 PLRC (2008) Table 15 shows that 90% of streetworkers stay in the sex industry to pay household expenses

128 Lauren Hersh, 'Prostitution Is Not Just Another Job' Huffpost, March 30, 2017

bereft of any support. It is this fear that the NZPC plays upon to elicit support from women. A genuine commitment to providing alternatives is required, based on the ethos that no woman's involvement in prostitution is inevitable.¹²⁹ Education and realistic employment options are needed to provide long-term, safe and secure alternatives.¹³⁰

The context of misogyny - which leads to women conceptualising themselves as sexual objects - must also be acknowledged. The way men view women, and how women in turn see themselves, contributes to a climate where prostitution is seen as an acceptable or inevitable option. The present New Zealand law protects a minority of the population, the clients, who feel they have the right to buy sex from women. Legalising prostitution fuels a culture of exploitation. Calling prostitution 'work' contributes to the objectification of women, fuels sexual harassment, keeps women and girls in prostitution, and helps the pimp 'managers' exploit them.¹³¹ The role of misogyny will be discussed in more depth later in this document.

129 R. Matthews et al. (2014)

130 Ibid.

131 Melissa Farley, Julie Bindel and Jacqueline M Golding, 'Men Who Buy Sex: Who They Buy and What They Know,' Eaves (2009)

8. Limited Health And Safety

8.1 Violence is recognised as part of the sex industry

Violence is a reality in prostitution. Apparent short-term rewards in prostitution are offset by the costs to physical, reproductive and mental health after suffering high levels of violence.¹³²

The Prostitution Law Review Committee found some 10% of the 776 workers surveyed had been physically assaulted in the past 12 months. Three percent had been raped during that year alone.¹³³ The risk of violence is exacerbated further when punters are intoxicated - a real issue in New Zealand, where alcohol is one of the main reasons behind a high incidence of domestic violence. Yet the New Zealand prostitution industry's health and safety manual¹³⁴ attempts to normalise violence and coercion, advising that steps and procedures should be developed to avoid or minimise occurrences. But the list of procedure headings essentially refers only to actions after an event. In fact, the NZPC openly states that it is impossible to wipe out the violence in the prostitution.¹³⁵ In other words, despite the fact that support for the 2003 reform was based largely on the idea of reducing harm for those selling sex, it is widely acknowledged that eliminating the greatest risk is impossible.

Janice Raymond, researcher and professor emerita of women's studies and medical ethics at the University of Massachusetts, found the committee which reviewed the law in 2008 all but ignored the issue of violence:

'The PRLC report reads as if prostitution has little to do with violence against women, contradicting the many authoritative studies worldwide that document the pervasiveness of such violence in both legal and illegal venues. In the PLRC's report, there is no section entitled "violence against women."'¹³⁶

Reframing the issue was also evident:

'A labour framework tones down existing abuse of women because committee members frame such exploitation as a breakdown in labour relations rather than violence against women. Violence and coercion become "exploitative working conditions."'¹³⁷

The issue of violence in prostitution is described further in section 10.3: 'The Reality of Abuse and Harm.'

8.2 Sexual health and unsafe sex

It is an offence to compel a prostitute to perform acts against her will. This includes coercing women to perform unsafe sex – an offence punishable by up to 14 years imprisonment.¹³⁸

132 Patricia Kelleher and others, 'Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland' Immigrant Council Ireland (2009) p8

133 PLRC (2008). Table 11: Adverse Experiences while Working in the Last 12 Months by Sector

134 Occupational Safety & Health; Department of Labour 'A Guide to Occupational Health and Safety in the New Zealand Sex Industry' (2008) p52 <http://espu-usa.com/espu-ca/wp-content/uploads/2008/02/nz-health-and-safety-handbook.pdf>

135 Anna Reed, 'Foreign Prostitutes Heading to NZ Illegally' 4 June 2016 <https://www.rnz.co.nz/audio/player?audio_id=201821623>

136 Janice G. Raymond, 'Gatekeeping Decriminalisation of Prostitution: The Ubiquitous Influence of the New Zealand Prostitutes' Collective' University of Massachusetts (2018) <https://digitalcommons.uri.edu/cgi/viewcontent.cgi?article=1116&context=dignity>

137 Ibid.

138 Prostitution Reform Act 2003, Section 16 and subsection 3

However, prior to the NZPC's six-monthly reports becoming less comprehensive in 2014, there were frequent comments about coercion by brothel operators:

'Workers report that managers at some venues encourage the worker to allow the clients to kiss and perform unprotected oral sex on them. Some contact NZPC for advice on how to deal with this pressure from both client and managers.'¹³⁹

Later in the same report:

'Despite the enactment of the Prostitute Reform Act [PRA] 2003, there remains ongoing issues of brothel operators trying to exert their power over sex workers.'

Some brothels display Ministry of Health posters stating that it is illegal to have unprotected sex, but this is often just for show:

'Others who do display these signs and appear to support safer sex, in fact do not really care about safer sex practices and preferring to take the money will encourage their workers to perform unsafe sex. Sex workers move to different operators for a better environment, hours, conditions, clients or money.'¹⁴⁰

The NZPC has been well aware of which brothels and operators used coercion. However, the Ministry has never followed up these reports to ensure the offending operators were prosecuted. The charge of 'induce/compel to provide sexual services', which carries a penalty of up to 14 years imprisonment, has been taken to court only twice since the law reform.¹⁴¹

An OIA in November 2018 requested details of the enforcement of safer sex and health and safety practices. The response¹⁴² demonstrated that there were virtually no official reports made of unsafe sex or of coercion. This shows that the PRA 2003 is being ignored by the Ministry of Health and Ministry of Justice: they receive regular NZPC reports stating that offences occur, but they are neither recorded nor followed up.¹⁴³ Thus the flagship promise of the PRA - greater protection for those working in prostitution - has never materialised.

When viewed in the light of the promotion by Worksafe NZ to prevent bullying in the workplace,¹⁴⁴ the coercion the Ministry of Health ignores in prostitution is beyond comprehension. There is simply no comparison to the kind of bullying that goes on within brothels.

There is an Occupational Safety and Health (OSH) manual for the sex industry, but the tome is so large it is practical only as an office reference. In response to the review committee's 'Recommendation 5,' the collective produced a more suitably-sized, user-friendly pamphlet entitled *Stepping Forward*,¹⁴⁵ containing 'useful' health topics such as how to train your body to accept anal sex without pain. It is also worth noting that in spite of the fact the NZPC was set up originally due

139 NZPC report July-Dec 2011 p29

140 Ibid., p32, following a survey conducted by the NZPC

141 According to an OIA made 1st October 2017, there had been two prosecutions for coercion, both in 2012. It is unknown if they were successful.

142 Appendix 2, item 9

143 Ibid.

144 'Bullying at work: Advice for Workers', Worksafe NZ, <https://worksafe.govt.nz/topic-and-industry/bullying/bullying-at-work-advice-for-workers/>

145 NZPC report July-Dec 2010, p16

to fears of the spread of HIV, and in spite of the collective's heavy influence over the law reform, it remains legal for women involved in prostitution to continue to work when infected with HIV. This fact is not shared in the public domain.

The NZPC does apply constant pressure to operators, encouraging them to utilise safe sex practices, and supports prostitutes against management whenever possible. As well as facing coercion, women may have language, cultural or financial issues which mean they agree to perform unsafe sex. Foreign language can be a problem when it comes to Health and Safety compliance, and the NZPC employs some bi-lingual workers to help overcome this issue.¹⁴⁶

8.3 Wider health issues

Health check-ups are not a legal requirement under the PRA, but the NZPC has made them a priority. Anyone new to prostitution is encouraged to go to the collective's Wellington clinic every three months for the first two years. Clinic staff report most need regular check-ups.¹⁴⁷ One NZPC report listed some of the health and safety issues presented at the Wellington community base:¹⁴⁸

'... condom breakage; unwanted pregnancies; fears regarding sexual health; interpersonal violence; dealing with clients under the influence of drugs and/or alcohol; abusive clients; poor management practices that compromise sexual health and safety; safer sex supplies; health promotion signs to display in brothels; and information and advice to new workers.'

Substance addiction also has an impact on health – in a wider sense than just the damage to the body caused by substance overload: for example, it can lead to not using condoms, not using them correctly or having unsafe sex in return for drugs. The NZPC reports that most brothel operators have a façade of being strict on drug and alcohol use. Most turn a blind eye; some even promote it.¹⁴⁹ Only a handful do not tolerate the use of drugs or alcohol.

Mental health is also a major concern. Repeated coercion and violence can result in Post-traumatic Stress Disorder (PTSD), along with – as noted in the NZPC's reports – severe depression and, in extreme cases, suicide. The collective reported after its 2010 survey that 'some operators allow people with noticeable mental health issues to continue to work in the sex industry.'¹⁵⁰ Both NZPC reports in 2010 indicated mental health concerns were urgent:

'Our Christchurch staff report an increase in contact with people with mental health or drug related issues: this has demanded a response from the NZPC.'¹⁵¹

'We have lost several women to suicide and illness in this report period.'¹⁵²

The NZPC's experience, along with regular staff training, enables them to deal professionally with these issues. According to one of the collective's reports to the Ministry of Health in 2013, staff were sent on a training course for dealing with suicide.¹⁵³

146 NZPC report July-Dec 2011, p27

147 NZPC report July-Dec 2009, p27

148 NZPC report Jan-June 2010, p34

149 NZPC report July-Dec 2010, p32

150 Ibid., p34

151 NZPC report Jan-June 2010, p35

152 Ibid., p36

153 Report July- Dec 2013, p18

NZPC staff receive favourable, albeit self-assessed, feedback on their services whenever they conduct appraisals.¹⁵⁴ But work-related injuries were significant when the law reform was reviewed: the CSOM report in 2007, produced at the request of the review committee, found '18% of participants had experienced a work-related injury.'¹⁵⁵ There were reportedly 2,332 prostitutes at the time across five cities, which would mean 419 of them had sustained injuries. Most of the injuries were caused by violent altercations with clients or sex that was too rough, causing vaginal or anal trauma; there were also cases of sprained wrists and ankles, pulled muscles and back pain.¹⁵⁶

On 9 January 2018, however, the response to an OIA request to the Accident Compensation Corporation (ACC)¹⁵⁷ showed that there were fewer than 11 new claims accepted every year relating to those involved in prostitution.¹⁵⁸ It should be noted that this included all types of employment, e.g., receptionists and operators, in addition to those engaged in physical sex acts. In addition, it did not limit claims to sex-related health and safety issues. For instance, information provided by an OIA about a WorkSafe NZ brothel 'inspection' was to investigate an accident due to a fallen pane of glass.¹⁵⁹

8.4 The right to refuse

The Prostitution Reform Act contains the right to refuse a client. The committee reviewing the law concluded that the reform had produced a marked improvement in the ability of women in prostitution to refuse both clients and unwanted practices, however, they found coercion still occurred:

'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.'¹⁶⁰

Yet on the previous page, Table 10 showed that this 'on occasion' was in reality 35.3% of prostituted women – those who had felt forced to accept clients they didn't want during the previous 12 months. The review committee's recommendations in 2008 suggested brothel operators should be advised of the 'right to refuse' upon application for a licence. This recommendation has never been implemented.

Of particular concern are the NZPC's reports that it is often the brothel operators themselves who coerce women into accepting clients or performing specific sex acts.¹⁶¹ The Department of Labour posters reference the right to say no, but, as the NZPC reports, these are not always displayed. The right to say no may be in place - but the pressure to acquiesce is real. The NZPC encourages women in prostitution to move¹⁶² from brothels to SOOBs¹⁶³ or to another 'safer' brothel in the first instance, and to report mistreatment to authorities in the second.

154 NZPC report July-Dec 2008, 'Comments from 115 completed forms', p24

155 CSOM 2007, G. Abel et al. p15

156 Ibid., p161

157 The ACC is the Crown entity responsible for administering the New Zealand's no-fault accidental injury compensation scheme

158 ACC's classification number for sex industry work is CU9530, which covers brothel-keeping, massage parlour and prostitution services

159 WorkSafe New Zealand file ref: 14/00603 21-11-2014

160 PLRC 2008, p47

161 There were 11 reports from the NZPC to the Ministry of Health between 2006 and 20014, often with several types of coercion identified in each one

162 NZPC Report Jan-June 2011, p30, 'Sex Worker Evaluation Report'. The NZPC did a questionnaire with sealed responses to gain self-evaluation of their services. See also the NZPC report for Jan-June 2008, p19

163 SOOBs are legal premises of prostitution where up to four women can work, providing they do so independently of any managers. Essentially, they are private houses. No right of entry is permitted without a warrant. Hence no inspections or police checks are made. The NZPC says many SOOB-based women come to their drop-in centres and it knows the location of the SOOBs

9. Failures In Protections And Regulatory Obligations

9.1 Brothel inspections

One of the main reasons for the passing of the PRA was the promise of brothel inspections by the Ministry of Health. Inspections as defined in the Act are a statutory requirement – and Recommendation 6 of the 2008 PLRC review suggested the Government provided additional funding for them. However, no inspections were carried out in the main centres of prostitution - Auckland, Wellington or Christchurch – for at least a decade after the PRA 2003 was passed.¹⁶⁴

Initially, in the six months following the introduction of the PRA, health officers carried out 12 inspections.¹⁶⁵ But when some public health service managers and medical officers asked the Ministry of Health whether there would be additional funding to help them carry out their new functions, the response was that inspections would need to be performed with existing resources:

‘We were told by the Ministry not to be proactive...We did actually discuss this issue of... doing something more active. But in the end... We did not have the resources.’¹⁶⁶

In 2013, MP Paul Hutchison wrote to the then Minister of Health, Simon Bridges, and was informed by Bridges’ reply that inspections were conducted only as a result of complaints. A subsequent OIA request in 2014, seeking the number of inspections, was passed backwards and forwards between several ministries and eventually had to be pursued by the Ombudsman. Months later the response proved that only nine brothel inspections had been made across the whole country in the previous 10 years. In 2018, a further OIA request to the Ministry of Health regarding funding for inspections revealed a complete lack of it:

‘No funding has been provided by the Ministry of Health specifically to enable Medical Officers of Health to carry out regular inspections of brothels.’¹⁶⁷

In the NZPC’s six-monthly report immediately following this OIA, the collective stated that it had begun to train a few medical officers in Wellington, with a view to conducting a local trial of brothel inspections.¹⁶⁸ If the trial were successful, the scheme might be rolled out across the country. Nothing, however, has ever been reported about this in subsequent reports.

Both the Ministry of Health and the NZPC have been well aware that medical officers of health were not carrying out inspections – and that this was in breach of the law. It should also be noted that over the years the NZPC reports did, on occasion, ask the Ministry to make inspections.

NZPC staff do inspect brothels but these are not in compliance with the law. They do not have any right of entry, so enter only when they are allowed to by brothel management; as they explain in their Ministry of Health reports, they have to ‘tread carefully.’ Of course, it will be precisely the brothels that they are not allowed into which will fall short of the PRA legislation. In the CSOM report in 2007,¹⁶⁹ the collective admitted that many Asian brothel owners – in charge of premises

164 OIA replies in Jan. 2015 from DHBs (District Health Boards)

165 Raymond (2018) p3

166 PLRC (2008) p53

167 OIA April 2018

168 NZPC report Jul- Dec 2015 p5

where trafficking is more likely – refused them entry. In fact, 10 out of 76 brothels in Auckland refused them entry.

Even when the NZPC is allowed into a brothel, the level of ‘inspection’ carried out is questionable. The collective’s comments to the Ministry of Health, regarding the inspections it has performed since 2016, are limited to relatively minor issues such as the lack of awareness posters. This contrasts with the comments they report hearing from prostitutes – comments regarding coercion by brothel operators, particularly to have unsafe sex or to accept drunk clients. These brothels are never identified.

Despite these shortfalls, the NZPC has deliberately deceived international audiences regarding compliance with the law. At the 2014 International Aids Conference in Melbourne, a speaker from the collective falsely implied that brothel inspections were being made regularly in line with the law reform.¹⁷⁰ The same kind of deception is seen in the book *Taking The Crime Out Of Sex Work*,¹⁷¹ written in 2010 by some of those involved in producing the 2007 Christchurch School of Medicine (CSOM) report. In a chapter of the book entitled, ‘Becoming inspectors of brothels,’ there are extensive descriptions of the experiences that medical officers and other officials had when conducting inspections. In fact, most of the 11 pages of information, including quotes, were lifted directly from the CSOM’s 2007 report; in other words, the book referred to inspections done only in the six months or so after the introduction of the PRA in 2003. Between that time and the publishing of the book in 2010, only one additional inspection was carried out - in 2008, in the Bay of Plenty. The information in the book was both misleading and obsolete.

9.2 Certification

Anyone responsible for the direction or control of people involved in prostitution needs a certificate – even receptionists. While the review of the law advocated continuing the current certification system, it recommended re-establishing the lead responsibility of the Labour Department:

‘The Department of Labour should be the lead agency to manage the inspection of brothels’¹⁷²

The review also recommended enhancing the certification:

‘The PRA [should] 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.’¹⁷³

170 Catherine Healy’s presentation ‘It’s Not What We Do But How We Do It: Occupational Health and Safety Standards for Sex Workers’, given in a scientific development workshop at the conference in Melbourne, July 2014. Slides available from the conference verify the content of the speech

171 Gillian Abel, Lisa Fitzgerald, Catherine Healy & Aline Taylor, ‘Taking the Crime out of Sex Work: New Zealand Sex Workers’ Fight for Decriminalisation’ (2010), Bristol University Press

172 PLRC, ‘Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003’ (2008), p15

173 Ibid., p18. To note: a brochure containing a limited amount of information was issued in 2004: <https://www.health.govt.nz/system/files/resource-files/HE1505-English%20prostitution-WEB.pdf>

None of these recommendations was implemented – and the current certification system is of little worth.¹⁷⁴ Besides the need to be a New Zealand or Australian citizen, the only requirement for anyone seeking certification to run a brothel is a clean criminal record, but even this is easily circumvented. Brothel owners have commented on the futility of the system, stating that certificates are never checked. One said it was more difficult to get a licence ‘from the Battersea dogs’ home.’¹⁷⁵ Furthermore, a list of certificate holders is meaningless in terms of facilitating inspections, given the addresses of the brothels are not included on the certificates.

Professor Emerita Janice Raymond’s paper¹⁷⁶ outlines in more detail the problems with the brothel certification system. No information as to the location of the brothels is included on the application or the certificate. Not a single authority has any access to a register of addresses of brothels or SOOB’s. The NZPC maintains that authorities have only to look in newspaper adverts to find the addresses, but they take no proactive steps to make this information available. No information is provided by the Government on the rights and responsibilities of brothel owners; this is left to the NZPC. In addition, the recommendation that brothel owners must agree to inspections in order to obtain a certificate in the first place has never been implemented.

9.3 Contracts and employment

Recommendation 25 in the 2008 review of the law reform recommended the sex industry be encouraged to adopt a system of best-practice written contracts between brothel operators and sex workers. Education, consultation and advocacy would facilitate such a system, the report suggested. In reality, however, many of the women in prostitution are ill-equipped to negotiate formal contracts, and the proposed education or assistance is not readily available. This recommendation has therefore not been implemented. Most ‘operators’ encourage prostituted women to subcontract, since this lessens their own responsibility whilst leaving them in control.

Recommendation 26 stated that the decision whether to enter a contract should be left entirely to the parties involved, operating according to the general employment law, with the Employment Relations Authority and the Employment Court available as for any industry. In principle, this recommendation is in place. In practice, however, it is simply a good intention. Few prostitutes have a written contract. Many are afraid of tax. Others fear the authorities because of their immigration status. Still others do not really wish to be in prostitution and so do not wish to formalise their employment.

In 2010, after the NZPC conducted a survey of people in prostitution, the following comment appeared in its six-monthly report:

‘One staff member noted that some sex workers are unable to negotiate with management but those who do stand up for themselves or negotiate strongly can gain from doing so. Sex workers who are working with these pressures often know their rights but do not feel empowered to exercise them from fear of losing their job or being treated unfairly. Some workers will do duties they do not wish to do through fear of losing their job.’¹⁷⁷

174 Julie Bindel, ‘The Pimping of Prostitution’ (2017) Palgrave Macmillan UK

175 Ibid., pg98

176 Raymond (2018)

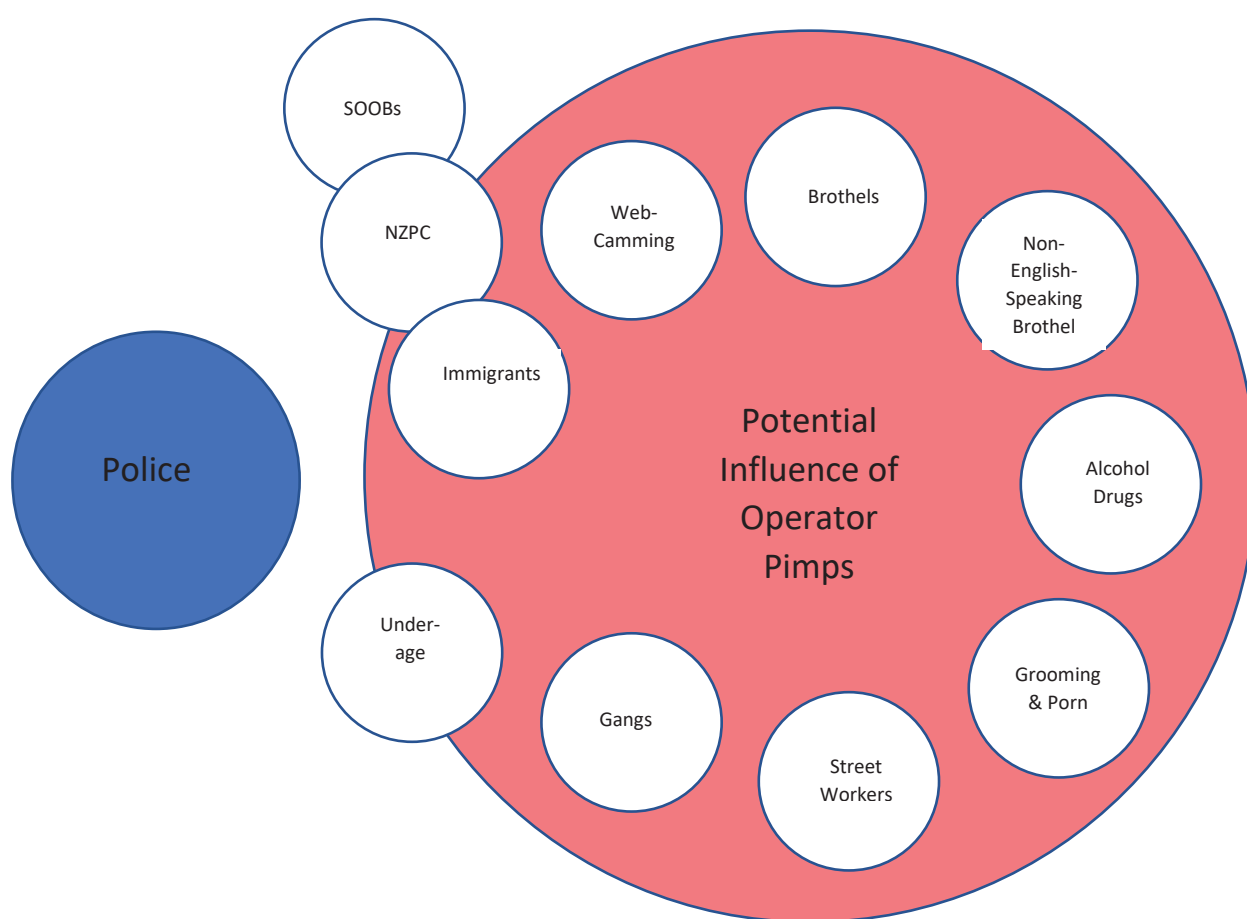
177 NZPC report July-Dec 2010 p31

Even where contracts may have been agreed on, some operators also impose fines and restrictions to enforce control, demanding unreasonable attendance hours, for example.

9.4 Reporting, policing and prosecutions

In other countries which have decriminalised prostitution, the police have been given extensive training and are seen to provide women with protection – to such an extent that it encourages the reporting of abuse. In New Zealand, however, since the law reform in 2003, the police have stepped back from pro-active involvement in prostitution. They now react only upon request. Pimping is now legal, so the pimps are not subject to any constraints or police action unless a complaint is made by a woman. In practice, however, only the most severe offences are reported; this usually excludes even ‘normal’ rape.

Potential areas of the sex industry controlled by pimps since the introduction of the PRA 2003, to the exclusion of police.



The sole exception to the hand-off policing approach is the city of Christchurch, an example of good practice. The police there go out of their way to work with the industry, and assist with a text-based warning system which alerts women about potentially violent clients.¹⁷⁸ While police officers across the rest of the country often lack the training or experience to deal empathetically with women involved in prostitution, and do not understand the workers' reality, Christchurch police have often been commended for their sympathetic treatment of those in the industry.¹⁷⁹

178 NZPC Report Jan-June 2009 p32

179 PLRC (2008) p58-59

Although NZPC spokespersons heralded decriminalisation as a new era in which women could report all coercion or violence to the police without fear of being prosecuted, years later they appear unconvinced: on one hand they maintain decriminalisation makes reporting to police more likely; on the other, they discuss how younger women do not risk reporting to authorities because it could ruin their chances of a purposeful career. The conflicting stance has nothing to do with age – a reluctance to report due to the risk of stigma down the track is true for anyone who has been in prostitution, as the law review committee found:

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.¹⁸⁰

The fears that reporting violence could lead to unwelcome publicity have been heightened with the rise of the internet. Women recognise how easily a potential future employer could access their pasts – not only news items about court proceedings, but also social media content. An attempt to leave prostitution and forge a new career could be thwarted by a simple Google search. Former NZPC staff member Sabrina Valise said women will often just move to another brothel, or to an SOOB, rather than risk online exposure by reporting the violence.¹⁸¹

According to an Official Information Act request in 2017, there have been only two prosecutions for coercion against prostitutes since the law reform.¹⁸² There have also been two landmark court cases taken by women in prostitution for sexual harassment: in 2014, the complainant won on grounds of the resulting mental distress¹⁸³; in 2020, another woman received a six-figure pay-out as part of a settlement after sexual harassment by a business owner.¹⁸⁴

While these isolated examples show the law can be effective, it cannot be lauded as a success while there has been almost no serious implementation of it. The claimant in the 2014 case said coercion by the 'manager' was frequent – and that in most cases women just went 'out the back' and endured it. As the NZPC's six-monthly reports confirm, most women eventually leave the brothel after enduring such coercion. Despite frequent mentions of coercion in the reports, the prostitutes' collective does not report any details – and the relevant Government ministries do not follow up.

180 Ibid., p112

181 Insight, 'The Oldest Profession - A Normal Job?' Radio New Zealand, 30 October 2016 <<https://www.rnz.co.nz/national/programmes/insight/audio/201821639/insight-the-oldest-profession-a-normal-job>>

182 OIA to the Ministry of Justice, response 1 November 2018. It did not mention if the prosecutions were successful. Appendix 4 item 11 gives details

183 Michelle Duff, 'Sex worker gets \$25,000 over harassment', Stuff, March 1, 2014, <https://www.stuff.co.nz/business/industries/9777879/Sex-worker-gets-25-000-over-harassment>

184 Esther Taunton, 'Sex worker wins six-figure settlement in sexual harassment case', Stuff, Dec. 14, 2020 <https://www.stuff.co.nz/business/123694563/sex-worker-wins-sixfigure-settlement-in-sexual-harassment-case>

9.5 Street prostitution

One of the most passionate champions of the PRA 2003 was Georgina Beyer, a Member of Parliament who had at one time been involved in prostitution. She has since, however, claimed New Zealand lawmakers were 'naïve,' and that they glossed over the problems inherent with street prostitution. In particular, the expectation that street prostitution would no longer be seen as an attractive option has proved to be completely false.¹⁸⁵ In more recent times there have been calls to control street prostitution by giving local councils the power to restrict the areas where street prostitution can take place, or to make street prostitution itself illegal.¹⁸⁶ This would have rescinded one of the few benefits of the PRA, however – the decriminalisation of sale – and the NZPC has successfully challenged such bids.

While the expected drop in street prostitution never happened, the 2007 CSOM report stated the sector was stable.¹⁸⁷ In a 2010 submission to the Manukau City Council, the NZPC said there were an estimated 400 street-based prostitutes throughout the country:

'Approximately 230 of these sex workers are spread across a number of sites in Auckland, including Manukau City and central Auckland. Approximately 45 work in Wellington, and a little over 100 work in Christchurch... It is the experience of NZPC that the number of sex workers is relatively stable, and in some parts of the country, such as Wellington, is decreasing.'¹⁸⁸

Even as recently as 2017, the NZPC stated that in some places the numbers had decreased – for example claiming the 50 street-based prostitutes in Wellington prior to decriminalisation had dropped to just 10.¹⁸⁹ But their official six-monthly reports¹⁹⁰ show the number of street-based prostitutes in Auckland alone has increased more than ten-fold. The number now exceeds the total for the five major cities reported in 2007.¹⁹¹ While the NZPC says that some prostitutes may be on the streets only once or twice a month, claiming commentators exaggerate the numbers,¹⁹² the discrepancy is simply too large to justify. In any event, women who prostitute infrequently are just as vulnerable, possibly more so, to the abuse and long-term effects on wellbeing.

Now that street prostitution is legal, women supporting families have been encouraged to enter the industry – using prostitution as a means to overcome short-term debt. These women are not committed to prostitution and so are usually not welcomed as reliable employees by off-street establishments.¹⁹³ Similarly, there is nothing to stop young people's journey into prostitution – particularly since the police do not have the right to challenge their age.¹⁹⁴ Particularly disturbing is

185 John Weekes, 'Beyer: We were naïve liberalising prostitution,' Xtra Community News, April 7, 2013 <http://xtranewscommunity2.smfforfree.com/index.php?topic=13257.0>

186 Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010. This bill was adopted by the Auckland Council in 2014

187 CSOM p37-38

188 'Submission of the NZPC to the Local Government and Environment Select Committee on the Manukau City Council (Regulation of Prostitution in Specified Places) Bill', under 'Street based sex workers – a description'. <https://www.parliament.nz/resource/en-NZ/00PLSocRP12051/254f439c98b85ca80feb5531896952ba9dd264e>

189 Catherine Healy et al., 'It's Work, It's Working: The Integration of Sex Workers and Sex Work in Aotearoa/New Zealand' (2017) Women's Studies Journal. 'Street-based sex workers'

190 The NZPC Jan-July 2019 report stated there were 2601 street workers in Auckland

191 The CSOM report gave 2332 across five major cities and 230 for street workers in Auckland. This data was confirmed in 2010 for the 'Ministry of Justice Prostitution law reform in New Zealand' report, 10 July 2010

192 NZPC 'Submission of the New Zealand Prostitutes Collective to the Local Government and Environment Select Committee on the Manukau City Council (Regulation of Prostitution in Specified Places) Bill

193 Insight, 'The Oldest Profession - A Normal Job?' RNZ, 30 October, 2016 https://www.rnz.co.nz/audio/player?audio_id=201821639, 2 mins 30 secs

194 See Section 12.4, 'Policing and Support'

the fact that 56% of women in street prostitution entered the industry before the age of 18.¹⁹⁵

The NZPC is a charity trust and the only NGO to receive Government funds for supporting the sex industry. Their reports regularly state that they try to persuade street prostitutes to move to safer work in off-street premises. In a supportive act in September 2018, the Christchurch Council voted to pay the NZPC \$40,000 for 10 hours per week towards the 'Outreach' programme, which worked to provide street prostitutes with safe-sex products, access to councillors, drug and alcohol programmes and healthcare. The initiative was recommended by a working group as an alternative to passing bylaws preventing prostitution in a residential area. The residents applauded the move, since the Outreach worker was already successfully carrying out much of this work, but its effectiveness has yet to be seen long-term.¹⁹⁶ It is also notable that in general this work is covered under the \$1.1 million per annum contract between the Ministry of Health and the NZPC.

Over time, the Government has essentially delegated its responsibilities regarding street prostitution to councils, saying the local authorities should install additional lighting and street-cleaning, for example, in areas where soliciting takes place. This is the approach supported by the NZPC, which gets funded by the Ministries to create policy documents on such matters. The councils' arguments against such changes are based on the increased costs for ratepayers of providing additional facilities, along with the public complaints about noise, nuisance and disruption to neighbourhoods.¹⁹⁷

In Canada, the internet is used by most young people wanting to sell their bodies; they see it as an easy way to find clients and safer than prostituting on the streets.¹⁹⁸ The NZPC denies that selling sex online is safer, however, because online work does not provide the opportunity to properly assess the potential client.

195 CSOM 2007, G. Abel et al. p61, Table 4.6, under Street Workers (29.4% + 26.6% = 56%)

196 Tina Law, 'Prostitutes Collective Gets \$40,000 from Christchurch City Council to Help Sex Workers', Stuff, September 13, 2018 <https://www.stuff.co.nz/the-press/news/107029667/prostitutes-collective-gets-40000-from-christchurch-city-council-to-help-sex-workers>

197 Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010: Policy advice from NZPC. Report 6 July-Dec 2010 part 2, p90-130

198 Holger-Ambrose et al. 'The Illusions and Juxtapositions of Commercial Sexual Exploitation among Youth: Identifying Effective Street-Outreach Strategies' (2013) Journal of Child Sex Abuse

10. The Reality Of Abuse And Harm

10.1 Legalisation of pimping

Although the PRA 2003 states clearly that any type of coercion is unlawful and punishable by imprisonment, the effect of it has been to legalise and legitimise coercion via pimping. The legal offences are 'to compel a prostitute into performing acts against her will' - which applies to both sex buyers and sex business operators, including pimps - and inducing or compelling another person into prostitution. This includes coercing women to perform unsafe sex. However, the reality is that coercive practices are prevalent and go largely unreported. Specific examples of abuse, coercion and violence may in theory be reportable, but, as already mentioned, women are unlikely to do so.

One of the long-term aims of decriminalisation was to provide a range of choices – of location and categories of prostitution – to enable women to operate safely. For example, women could move from brothels which had reputations for being abusive to better conditions in SOOBs. The NZPC, however, reported in 2011 under the heading 'Coercion and Bullying,' that coercion and bullying still happen in working situations:

Private workers, brothel workers and street workers have shared stories of coercion from their bosses, peers, landlords, other workers and clients.¹⁹⁹

This shows the law had not improved brothel management. It is indeed difficult to imagine that pimps would treat women better when the law has legitimised their activities - and when they are subject to scrutiny only if a woman complains.

10.2 Gangs and organised crime

The NZPC maintains that gang involvement with prostitution is not much of a problem, but many independent reports show otherwise. Gangs have featured prominently in New Zealand media reports for many years: gang members actively recruit women and girls, often under-age. Typically, the prostitutes collective reports that, 'The young people the NZPC have been in contact with are not controlled by gangs'²⁰⁰ but given that the gangs are known to keep their girls in gang-houses, it is unlikely that the NZPC has any contact with them.²⁰¹

In 2015, Hawkes Bay police investigated extortion and assaults on women involved in prostitution, after reports of gang members forcing them to pay 'tax.' Napier brothel owner Kathy Woods, who spent 30 years in prostitution, said at the time that prostitutes working for gang members was 'nothing new':

"This has been going on for years and years," she said. "I do know we've had young girls working for us and they end up working for gang members, and we don't see them again."

199 NZPC Report Jan-June 2011, p26 under 'Evaluations'

200 NZPC Report Jan-June 2010, p78 item 6

201 Harrison Christian, 'Gang Sex-Trade Tax Probe' Hawkes Bay Today, 21 July 2015 < >; Elizabeth Binning, 'Teen Prostitutes Pimped out by Gang Members' NZ Herald (2008) <<https://www.nzherald.co.nz/nz/teen-prostitutes-pimped-out-by-gang-members/X4MAP273SMK54I2K2EGMA36K3U/>>

She said the gangs targeted young girls in particular.

"When the gangs get hold of these girls, they get hooked into the drug scene. As soon [as] we get a young girl working for us, she's only there for a few weeks and then she's gone. They should change the law."²⁰²

In 2008, South Auckland police identified and removed 16 young people - including girls as young as 13 - who were selling sex on the street for gang members.²⁰³ Some of the girls were living in gang homes, exchanging sex with their pimps for accommodation, food and drugs.²⁰⁴ Detective Senior Sergeant Dave Pizzini said police had known for some time, anecdotally and through historic sexual abuse investigations, that under-age prostitution was 'alive and well.' One of the previous cases had involved the abduction and rape of a 12-year-old girl involved in prostitution.

Four years later, police confirmed gangs were the main force behind the illegal trade in under-age prostitution; Streetreach New Zealand, a community organisation working with women involved in street prostitution, said under-age girls were being pushed into the sex industry but were too scared of the gangs to tell police.²⁰⁵

An academic paper in 2016, looking at prostitution from a Māori perspective, found gangs used fear to control women and to keep knowledge of their activities under wraps.²⁰⁶ Women interviewed for the study, from both Wellington and Auckland, talked of the need for increased police patrolling in the areas where they operated, because they feared for their safety due to the presence of gangs and minders.

10.3 Violence

The violence inherent within prostitution has been well documented.²⁰⁷ In 2013, several women involved in prostitution appeared before a New Zealand parliamentary select committee and testified of the abuse they had suffered in the sex industry. Following the closed hearing, committee members expressed how profoundly moved they were by what they heard.

The realities of prostitution are well articulated by the following quote. Be warned, it is explicit:

'If this work that we're outsourcing on to poorer women is regular work, we should be able to talk about the skill-set necessary in order to carry it out. According to [prostitute support service] WHISPER,²⁰⁸ this skill set includes: "performing sex acts, feigning sexual enjoyment, enduring all manner of bodily violation, allowing your body to be used by another person."

'If we listen to exited women, we hear what it means to perform this skill-set as an individual. For Rachel Moran in her book *Paid For*, this was "the ability to control your

202 Ibid.

203 Elizabeth Binning, NZ Herald

204 Harrison Christian, 'Gang Sex-Trade Tax Probe' Hawkes Bay Today, 21 July 2015; Napier brothel owner Kathy Woods confirmed the account

205 Rob Kidd, 'Gangs Force Sex Trade on Under-age Girls', Stuff, 12 Sept, 2012 <<http://www.stuff.co.nz/auckland/local-news/7654574/Gangs-force-sex-trade-on-under-age-girls>>

206 Elise Escaravage, 'Voices of Māori Sex Workers. A Dissertation Submitted in Partial Fulfilment for the Degree: Masters in Human Rights Policy and Practice' School of Global Studies, University of Gothenburg School of Business and Social Science (2016)

207 For a discussion of the inherent violence, see Mary Sullivan, 'What Happens When Prostitution Becomes Work' CATWA (2005). Also Jan Macleod 'Challenging Men's Demand for Prostitution in Scotland' Women's Support Project

208 WHISPER: Women Hurt In Systems of Prostitution Engaged in Revolt, a Minnesota organisation which later morphed into Breaking Free

reflex to vomit; restrain your urge to cry; to imagine your current reality is not really happening.”

Andrea Dworkin, who spent time in prostitution herself, gives the clearest description of what this line of ‘work’ entails:

‘Prostitution is not an idea. It is the mouth, the vagina, the rectum, penetrated usually by a penis, sometimes hands, sometimes objects, by one man and then another and then another and then another and then another. That’s what it is.’²⁰⁹

Punters frequently enjoy mistreating or hurting women. This extends to paying to choke under-age girls until they pass out.²¹⁰ Furthermore, some men do not think the concept of the rape of a prostitute is actually possible:

‘Rape myths are a part of culturally supported attitudes that normalise rape (Lonsway and Fitzgerald, 1994). Rape myths include “women say no but they mean yes,” and “rape accusations are women’s way of getting even with men...

One-fourth to one-third of the men we interviewed endorsed rape-tolerant attitudes. A third of the punters stated that rape happens because men get sexually carried away (32%) or their sex drive gets “out of control” (34%). 12% told us that the rape of a prostitute or call girl was not possible. 10% asserted that the concept of rape simply does not apply to women in prostitution.

22% of our interviewees explained that once he pays for it, the customer is entitled to do whatever he wants to the woman he buys. These attitudes are what make prostitution so dangerous for the women. One of the men we interviewed stated, “They’ll basically do anything for money.” The belief that the money they paid cancelled out the harm or exonerated the punter was a recurring theme in our interviews.²¹¹

The percentage of men who thought prostitutes were ‘un-rape-able’ was even higher in a 2009 study of punters in London, UK:²¹²

‘Twenty-five per cent told us that the very concept of raping a prostitute or call girl was “ridiculous.” Nearly one-half of the buyers stated that rape happens because men get sexually carried away (47%) or their sex drive gets “out of control” (48%). Sixteen per cent stated that they would rape a woman if they could be assured that they would not be caught.’

While these attitudes could never have been legislated away through decriminalisation, the NZPC takes the view that the right to refuse – and the ability to report – amounts to a complete solution. In 2018, to a good deal of media fanfare, Catherine Healy released a new booklet, *What To Do After Violence*, which gave advice to sex workers who had been violently abused.²¹³ No

209 Andrea Dworkin, ‘Prostitution and Male Supremacy’, Andrea Dworkin, ‘Prostitution and Male Supremacy’, Michigan Journal of Gender & Law, (1993) <https://repository.law.umich.edu/mjgl/vol1/iss1/1>

210 Natalie Thorburn, ‘Consent, Coercion and Autonomy: Under-age Sex Work in Aotearoa New Zealand’ (2016), Aotearoa New Zealand Social Work

211 Jan Macleod et al., ‘Challenging Men’s Demand for Prostitution in Scotland’ Women’s Support Project (2008) p14, 20-22.

212 Melissa Farley, Julie Bindel & Jacqueline M Golding, ‘Men Who Buy Sex: Who They Buy and What They Know’ Eaves, London; Prostitution Research & Education, San Francisco, p13. <https://prostitutionresearch.com/men-who-buy-sex-london-2009/>

213 NZPC, ‘What to Do: A Guide for Sex Workers Who Have Experienced Sexual Assault’ [2020] <<https://www.nzpc.org.nz/pdfs/WHAT-TO-DO-A-guide-for-sex-workers-who-have-experienced-sexual-assault.pdf>>.

other industry has required similar publications. There is a failure to acknowledge that the very existence of such written advice presupposes that woman will suffer violence in the industry.

The official Health and Safety Manual for people in prostitution attempts to normalise violence and coercion by advising that brothels should develop procedures for women to 'identify potentially dangerous situations,' along with strategies 'to protect themselves.'²¹⁴ In Victoria, Australia, it's possible to get Government funding for 'brothel management programs on self-defence.'²¹⁵ This could be compared to crisis management training for a hostage situation – which can sometimes literally be the case when women are held somewhere against their will²¹⁶ – but it also sheds light on the vulnerability inherent in the prostitution transaction.

The CSOM²¹⁷ table titled 'Adverse experiences whilst working in the last 12 months by sector' showed that 760-plus prostitutes suffered physical assaults (not including rape), threatened assaults, or being held against their will (kidnapping), but less than 20% of these incidents were reported to police. There were two main reasons for non-reporting: poor experience previously with police, and because their names could appear in the media. The NZPC's six-monthly reports frequently state that while women do not usually report abuse to the police, they often report it to someone they trust, e.g., a co-worker, or the prostitutes' collective itself. However, the collective does not report or keep records of the abuse reported to them.

Of course, even if violence in prostitution were reported more frequently, the odds of successful prosecution remain low. There have been no prosecutions, for example, from the investigation into the 2013 'Roast Busters' scandal, in which teenage girls were raped and later shamed online. A media report about the case noted it was 'notoriously difficult' in New Zealand to secure convictions for sexual violence:

'Such crimes are far less likely to be reported to police than similarly serious offences, and when they are, they are much less likely to be prosecuted, with rape cases four times less likely to go to court than other physical assault cases. According to recent reporting by the NZ Herald, 2400 reported violent sex crimes were "unresolved" in 2016. "Unresolved" denotes that police believe an assault occurred, but there was no charge ultimately laid. The data suggests around 80 per cent of reported aggravated sexual assaults go unresolved.'²¹⁸

Reported or not, prosecuted or not, sexual violence results in subjective pain: pain that is personal and real. When pain or the subsequent suffering is severe or frequently repeated, trauma will often result. Pain is a lived experience. It is not impartial or detached. As Canadian psychologist Jordan Peterson points out, phrases such as 'she was gang raped' can obscure the fact that, subjectively, the woman or girl suffered each and every individual rape.²¹⁹ The same can be said of the violence inherent in prostitution: each violent punter, and every painful or degrading act, causes harm. 'Harm reduction' is not elimination. Many advocates, including academics, fail to recognise this when promoting or defending legalisation.

214 'A Guide to Occupational Health and Safety in the New Zealand Sex Industry' (2008) p52 <http://espu-usa.com/espu-ca/wp-content/uploads/2008/02/nz-health-and-safety-handbook.pdf>; available by request from: <http://www.worksafe.govt.nz/>

215 Mary Sullivan, 'What Happens When Prostitution Becomes Work' CATWA (2005)

216 The PLRC (2008) report acknowledged that women can sometimes be taken or held somewhere against their will, Table 11

217 CSOM 2007, G. Abel et al. p120, table 6.4

218 Alex Casey, 'From I'm Still Living It: A Roast Busters Survivor's Story,' The Spinoff, 25 January 2019 <<https://thespinoff.co.nz/society/25-01-2019/im-still-living-it-a-roast-busters-survivors-story/%0A>>

219 Jordan Peterson, '12 Rules for Life: An Antidote to Chaos' Random House, Canada (2018) p35

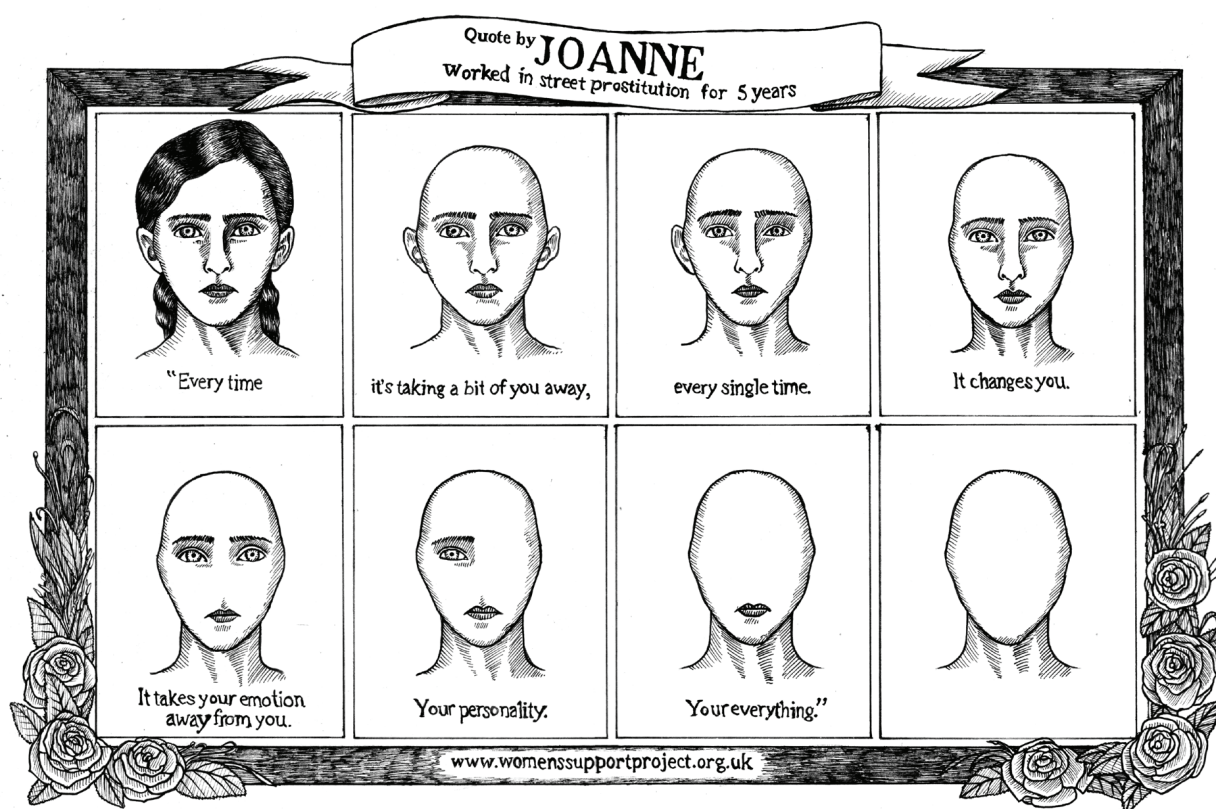
10.4 Psychological damage and substance abuse

According to the International Women's Health Coalition, 'sexual rights' are defined as the ability to control your own body and sexuality without any form of discrimination, coercion or violence. Sexual rights 'underpin the enjoyment of all other human rights,' and are a prerequisite for equality and justice.²²⁰

Sex in the context of prostitution, however, is inherently not free from discrimination, coercion or violence. When this is pointed out, there will often be an attempt to discredit the speaker as anti-sex or prudish – but this demonstrates a naivety about the reality of sex in prostitution: the fact that it involves a 'splitting off,' or 'numbing out,' which creates psychological damage. It also undermines the work being done in relation to consent and to calling out objectification.²²¹

A Christchurch brothel owner said on RNZ: ²²²

'I make it very clear to the girls who come in for an interview [that]: every client takes a piece of you, okay, a little piece. If you choose to do this job, then for goodness' sake make it count'.



Acquiescing to unwanted sex, with or without violence, results in psychological damage - a fact established via many studies, documenting depression, post-traumatic stress disorder (PTSD), anxiety disorders, dissociative disorders and bipolar disorder in women involved in prostitution.²²³

²²⁰ A complete definition, agreed upon by leading organisations, can be found at <https://iwhc.org/articles/sexual-rights-human-rights/>

²²¹ SASE, 'Emotions and Exit' (2017) <http://www.sase.org.uk/resources>

²²² RNZ Insight 2016: 'The Oldest Profession- A Normal Job?' 7min

²²³ McKeganey, N. 'Street prostitution in Scotland: The views of working women' *Drugs: Education, Prevention and Policy*, (2016) 13(2), 151-166 <https://doi.org/10.1080/09687630500412312>; Farley, P. 'Prostitution, trafficking, and traumatic stress' (2004) <https://doi.org/10.4324/9780203822463>

Studies in five different countries showed PTSD impacted an average of 67% of prostituted women.²²⁴ This is similar to the figure for combat veterans.²²⁵ In Australia, researchers estimated that women involved in prostitution were affected by PTSD at a rate of 40-55%.²²⁶

The NZPC's six-monthly reports make it clear such psychological damage also exists in this country, sometimes to a tragic extent, as noted in their first report for 2010:

‘We have lost several women to suicide and illness over this reporting time.’²²⁷

The reports also mention drug and alcohol abuse amongst the women the collective interacts with – and a lax attitude to alcohol in most of the brothels.

‘NZPC staff report that most operators appear to be strict on alcohol and drugs use and although most appear to be they are not. Alcohol is tolerated; drugs on the other hand are not. NZPC staff explained that some operators have a behind the scenes “out of mind, out of sight” attitude to drugs and alcohol use. Only a handful of operators do not tolerate either alcohol or drugs. Some operators actively promote alcohol use and turn a blind eye to drug use.’²²⁸

One of the 2013 reports stated that alcohol and drug clinic attendance slowed as women found it easier to carry on working in prostitution than to make major changes - and so did not want to lose their primary coping mechanism.²²⁹ In the Jul-Dec 2012 report, the NZPC's Christchurch base had seen an increase in women with drug and mental health issues.²³⁰

Interestingly, the men who buy women in prostitution seem to be aware of the women's dependence on substances. A Scottish report based on interviews with 110 such men found many of them observed dissociative symptoms. Several punters said they believed the capacity to detach, or ‘switch off,’ differentiated women in the sex industry from other women:

‘It has negative effects therefore you pigeon-hole your whole life – separate it from work life. They put what they do to the back of their mind – they couldn't exist otherwise as a prostitute.
‘She'll end up drinking and doing drugs just to get all those things out [of] her head. Circumstances are forcing her to do it.’²³¹

Dissociation²³² is a psychological defence commonly used by people suffering from unbearable and inescapable stress – but none of the men in the study described the dissociation as symptomatic evidence of the harm of prostitution.

224 Houskamp and Foy, (1991); Saunders, (1994); Kemp, Rawlings, & Green (1991)

225 Farley, M. et al. ‘Prostitution and trafficking in nine countries’ *Journal of Trauma Practice*, (2004) 2(3-4), 33-74. https://doi.org/10.1300/j189v02n03_03

226 Gospodarevskaya, E. ‘Post-traumatic stress disorder and quality of life in sexually abused Australian children’ *Journal of Child Sexual Abuse* (2013), 22(3), 277-296, <https://doi.org/10.1080/10538712.2013.743953>; Nadew, G. ‘Exposure to traumatic events, prevalence of posttraumatic stress disorder and alcohol abuse in Aboriginal communities’ *Rural and Remote Health*, (2012) <https://doi.org/10.22605/rrh1667>

227 NZPC Report Jan-June 2010 p36

228 NZPC Report Jul-Dec 2010 p32

229 NZPC Report Jul-Dec 2013 p34

230 NZPC Report Jul-Dec 2012 p31

231 Jan Macleod et al., ‘Challenging Men's Demand for Prostitution in Scotland’ *Women's Support Project* (2008) p22

232 Dissociation refers to the process of ‘splitting off’ whereby a person effectively takes their mind out of their body and distances themselves from their physical experiences. In effect, it is a way of numbing their experience of pain and often leads to addiction. See SASE, ‘Emotionally Intelligent Exit’ (2017) <http://www.sase.org.uk/resources>

Men who buy sex are far from the only members of the community who fail to acknowledge the psychological damage from prostitution. The Women's Support Project, which compiled the Scottish study, has, over many years, conducted trainings and public education events about prostitution. They've found a broad lack of understanding around the impact on mental health:

'We have learned that although people can grasp that there are many physical health risks inherent to prostitution, most have not considered the adverse psychological impact of the unwanted sex of prostitution. Increasing the public's awareness regarding the lasting psychological damage of unwanted sex is an important component of any prostitution prevention programme.'²³³

During the second reading of the law reform bill in 2003, National MP Judith Collins referred to fellow MP Georgina Beyer and the mental health damage caused by prostitution:

'She [Beyer] has told us tonight about the psychological damage of being a prostitute. I have spoken with prostitutes myself and asked them what it is that they do, and what the damage is to them. I asked one of them if there was a lot of drug use in massage parlours—which, by the way, I have to tell some members on the other side of the House are actually brothels—and she said to me: "Of course, Judith, there has to be drugs, because how the hell else would you do the job?" That sounds sensible to me, and I see Georgina Beyer is agreeing.'²³⁴

10.5 Misogyny

No attention is given to the buyers of sex in New Zealand, and there has been no research into their attitudes - neither before nor after the introduction of law reform. However, overseas research shows that a quarter of men think it is impossible to rape a prostitute - and that payment allows a man to engage in any act he chooses. Even where legislation purports to protect women from violence, the attitude of the men buying sex demonstrates high levels of misogyny.²³⁵ It would be naïve to suggest that these attitudes can be changed by legalising or fully decriminalising the industry and legitimising demand.

As explained in an Irish report on trafficking and prostitution, a woman who is purchased for sex is 'constructed as an object, not as a subject, within the exchange':

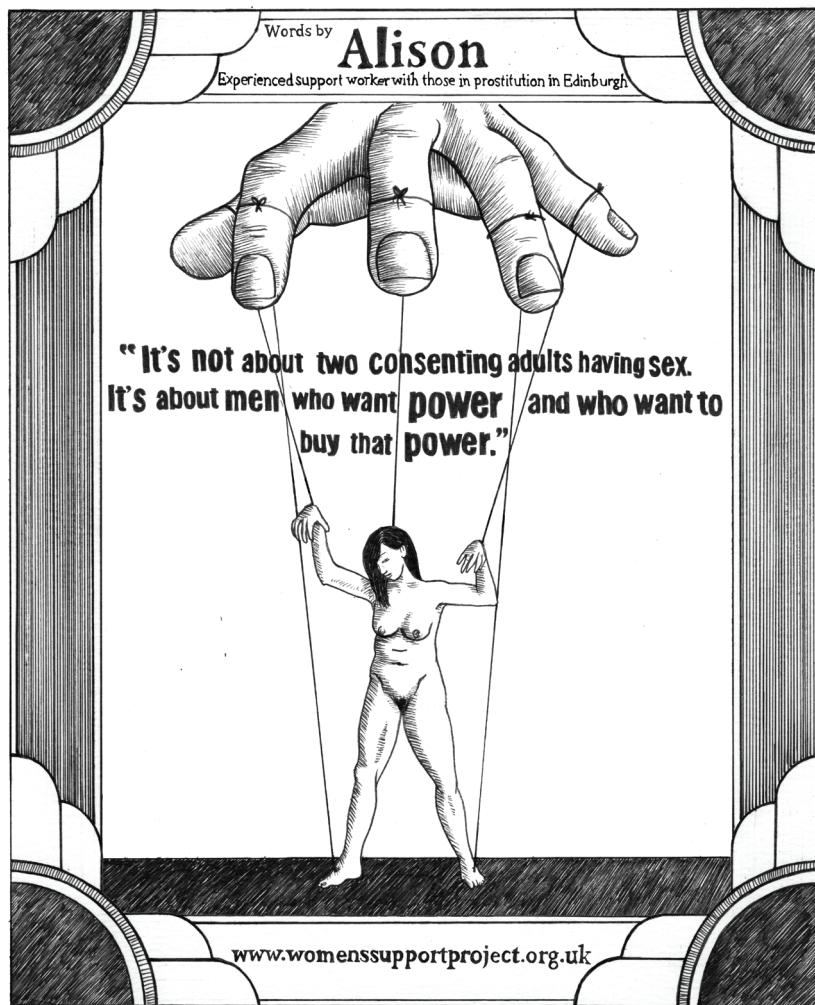
'No matter how much control the prostitute exercises over the details of each exchange, the essence of the transaction is that the client pays the prostitute to be the person who is not a person. Clients thus get to have sex with a real live, flesh and blood human being, and yet to evade all the obligations, dependencies and responsibilities which are implied by sexual 'infusion' in non-commercial contexts. They get to have sex with a person who is physically alive but socially dead.'²³⁶

233 Ibid., p22

234 Hansard, 'Prostitution Reform Bill - Second Reading.' 19 Feb, 2003 <https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030219_00001132/prostitution-reform-bill-second-reading>

235 The Canadian Government 'The Challenge of Change: A Study of Canada's Criminal Prostitution Laws' (2006), under 'The Way Forward'

236 Patricia Kelleher et al., 'Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland' Immigrant Council Ireland (2009) p43



A study of ex-pimps found they enjoyed the power and sense of control over the women they prostituted – an apparent fetishisation of abuse:

'Pimps made it clear that the recruitment and the control provided a missing sense of power for them. "It gives you a rush," said one. The girls and women also provided love to the pimps: "I liked being big daddy, knowing that a woman loved me or liked me enough to sell her pussy and give me the money," said one. And another explained, "It made me feel like I was a lucky guy to have women pay me and control their heads and bodies."' ²³⁷

In the same study, 27% of the pimps said that once a punter had paid, he was entitled to engage in any sexual act he chose. The study found many men afforded the women no agency whatsoever:

'.... Many of the men who buy women for sex think that the women they buy have no rights in the interaction. These men believe that the purchase entitles them to do anything they want, including inflicting assault. As Kinnell (2008) argues, such men believe that paying for sex "gave them the right to inflict any kind of assault they chose."' ²³⁸

237 Jody Raphael and Brenda Myers-Powell, 'From Victims to Victimiziers: Interviews with 25 Ex-Pimps in Chicago' (2010) p8 <https://law.depaul.edu/about/centers-and-institutes/schiller-ducanto-fleck-family-law-center/Documents/interview_ex_pimps.pdf>. p5

238 Ibid., p13

According to the Women's Support Project's report, prostitution impacted not only the way men thought about women, but also their actual behaviour – including the likelihood of sexual aggression against non-prostituting women:

'54% of the men who frequently used women in prostitution had committed sexually aggressive acts against non-prostitute partners compared to 30% of the less frequent users. The more frequently a punter used women in prostitution, the more likely he was to have committed sexually coercive acts against non-prostituting women.'²³⁹

Monto and McRee²⁴⁰ made similar findings, comparing 1,672 American men who had been arrested for using women in prostitution with men who had not used women in prostitution. Men who were either first-time or repeat users of women in prostitution were significantly more likely to have raped a woman than non-punters. Busch et al. found that among those who had been arrested for soliciting prostitutes, a subgroup of these men told the researchers they had previously committed violence in order to obtain sex from a non-prostituting woman.²⁴¹ These same men had had many sex partners (both prostituting and non-prostituting women) in the previous year. They also tended to watch pornography regularly, to have served in the military, and to have themselves been physically or sexually abused as children.

The extent of punters' patriarchal attitudes – and their disdain for the women they purchase – is evident from punters' own words, like these from the 'Challenging Men's Demand for Prostitution in Scotland' report:²⁴²

- 'In order to really enjoy prostitution, you need to know how to control them'
- 'Prostitution's exciting to the extent you know you've got control'
- 'Everyone recognises the objectification as part of the business exchange of prostitution'
- 'You need to know how to manipulate and control them – which is easy with street prostitutes – you dangle drink and drugs in front of them'
- 'It's a power thing really – being able to get a woman to give you sexual services by handing over money'
- 'There is a section of male society that view women in prostitution as property or view women as cheap.'

In 'Men Who Buy Sex: Who They Buy And What They Know', it made no difference to the majority of punters whether a woman was independently selling sex, or doing so under the control of a pimp.²⁴³

"Fifty per cent of interviewees said that they had used a woman in prostitution whom they knew were under the control of a pimp. As one man explained, "It's like he's her owner." As another man put it: "The girl is instructed to do what she needs to do. You can just relax, it's her job."

239 Jan Macleod et al., 'Challenging Men's Demand for Prostitution in Scotland' Women's Support Project (2008), p15

240 Martin A Monto and Nick McRee, 'A Comparison of the Male Customers of Female Street Prostitutes with National Samples of Men' International Journal of Offender Therapy and Comparative Criminology, (2005)

241 Noel Bridget Busch et al. 'Male Customers of Prostituted Women: Exploring Perceptions of Entitlement to Power and Control and Implications for Violent Behavior toward Women' Violence Against Women, (2002)

242 Jan Macleod et al. (2008) p20

243 Farley, Bindel and Golding, 'Men Who Buy Sex: Who They Buy And What They Know' p15

10.6 Prostitution and pornography

Punters across the world agree that pornography drives them to use prostitutes.²⁴⁴ Porn is prostitution in front of the camera – all porn, not just the increasingly prevalent webcam porn – and an integral part of the sex industry. It feeds and encourages prostitution.

Research shows that porn triggers brain activity in those with compulsive sexual behaviour and mirrors that of drug addiction.²⁴⁵ As such, it creates the desire not only for more quantity, but for more extreme and objectional acts. Users are drawn by the desire to act out the activities they view, but often find their real-life partners consider the acts so obnoxious they refuse to emulate them. This can produce aggressiveness from the men towards their partners, and is a factor in their use of prostitutes.

Thirty or more years ago, hard-core extremes were rare – even oral sex was considered somewhat deviant – but the internet has normalised disturbing behavioural changes in the general public, as described in the Australian report, ‘Pornography as a Public Health Issue’:

‘The harmful consequences of pornography’s proliferation can nevertheless be clearly discerned in cultural and attitudinal change. Pornography (particularly the increasingly popular hardcore pornography genres), depicts a “fantasy” world in which the harassment, rape, intimidation and coercion of women is received positively.’²⁴⁶

The report found pornography had violent consequences for women, including being choked and coerced into sexual acts they found painful and/or degrading:

‘The evidence connecting pornography with rape-supportive attitudes and actual perpetration of sexual violence is now compelling.

So too is the evidence that pornography is changing the sexual behaviours and expectations of teenagers, for whom the negative influence of pornography is increased by lack of sexual experience that might cause adolescents to question the idea that pornography sex is normal. Changes to teenage sexual behaviour, including risky sexual behaviours, are clear.’²⁴⁷

Many prostitutes are disgusted with the demands made of them:

“What is wrong with men these days... half of them want anal sex and awful things... I do not want these... it is disgusting... but most girls will do all of these and men expect it.”
(Sonia)²⁴⁸

Clearly porn cannot be dismissed as a separate issue from prostitution: it fosters and normalises violence and abuse towards prostitutes. It is also worth noting that the violence and abuse in prostitution may impact migrants on temporary visas even more, as they are often more willing than resident women to do unsafe or extreme sex acts.

244 ‘Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland’ p108

245 <https://www.cam.ac.uk/research/news/brain-activity-in-sex-addiction-mirrors-that-of-drug-addiction> University of Cambridge (2014)

246 Pornography as a public health issue: https://d3n8a8pro7vnmx.cloudfront.net/acl/pages/9248/attachments/original/1525226833/Pornograph_as_a_Health_Issue_Report.pdf?1525226833

247 Ibid.

248 Globalisation, Sex Trafficking and Prostitution: The Experiences of Migrant Women in Ireland, p108

Fortunately, concerns about the harms of pornography are growing in the wider public arena. In 2018, TVNZ's 1 News covered the topic with a week of reports:

'The 1 NEWS team has reported on New Zealand's terrible rate of sexual violence, our poor understanding of consent, the rise of sexting, and the #MeToo movement. The missing piece of this puzzle is – porn. We want to explore how porn is influencing young people's real-life behaviour. At TVNZ, we reckon it's time to start that conversation.'²⁴⁹

Following a report by the Classification Office,²⁵⁰ the New Zealand Government has recently launched an acclaimed TV advertising series, 'Keep it Real Online', advising parents and young people on issues such as pornography, grooming and bullying.²⁵¹ Now that the Labour Party is governing alone, however, it appears to have backed away from considering a legislative change to regulate online pornography.

249 Jehan Casinader, TVNZ 'Out Of The Shadows – why it's time to talk about porn' <https://www.tvnz.co.nz/one-news/new-zealand/shadows-why-s-time-talk-porn>

250 'Breaking Down Porn' <https://www.classificationoffice.govt.nz/news/latest-news/breaking-down-porn/>

251 <https://www.keepitrealconline.govt.nz>

11. Lack Of Prevention And Support For Exiting

11.1 Ethos relating to exit and prevention

In order to sway the parliamentary vote on the PRA 2003, the pro-prostitution movement took pains to emphasise that the law change would help deter people from entering the sex industry in the first place - and help others to exit it. MP Tim Barnett promised that the PLRC, the committee set up to review the law, would be looking intently at both issues:

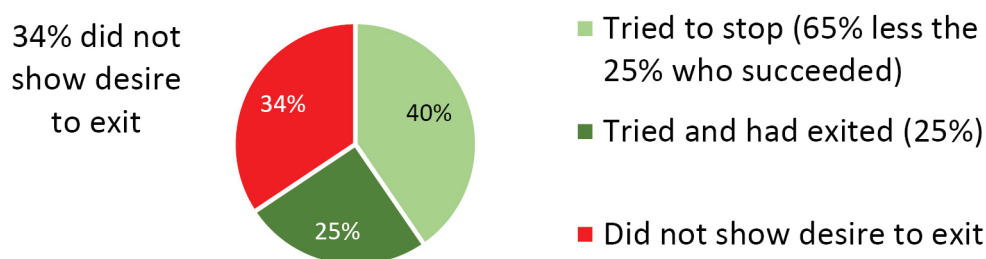
‘Also, we set up a review committee to monitor how the bill works and report on how best to stop people entering, and help them to exit from, the sex industry.’²⁵²

A report prepared for the PLRC 2008 committee found the main reason for exiting was to leave behind a life laden with risk:

‘As sex work has been decriminalised in New Zealand, a reasonable question is why those involved in the industry should be encouraged to leave. The answer to this is that sex workers operate in a risky world both in terms of sexual health and violence, whatever controls are put in place to reduce risks (Farley, 2004). The PRA seeks to allow exiting as a normal practice. While there is a very strong case for exiting interventions on health and safety grounds, the literature suggests a weaker case on economic grounds...’²⁵³

In practice, however, the NZPC – the organisation funded by the Government to provide services to those in prostitution – has never developed any training or information service about exiting. Not even a pamphlet. Exiting is against the NZPC’s basic principles: they state regularly in media interviews that ‘sex work’ should be seen as a job just like any other;²⁵⁴ supporting people to exit would go against this ethos. Despite the fact the majority of women intend to be involved in prostitution only temporarily,²⁵⁵ there is no mention of exiting on the NZPC’s website, and no mention of any assistance to do so. In fact, they frequently show hostility towards those who have exited.

Ministry of Justice data²⁵⁶ showed nearly two-thirds of people involved in prostitution had tried to exit the industry at some stage – and that a quarter had succeeded:



252 Hansard, ‘Prostitution Reform Bill - Second Reading, 19 February, 2003 <https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030219_00001132/prostitution-reform-bill-second-reading>

253 Mayhew & Mossman, ‘Exiting Prostitution: Models of Best Practice’ (2007) CJRC, Victoria University, Wellington, p17

254 ‘They [the NZPC] started talking about how stigma against sex workers was the worst thing about it, and that prostitution is just a job like any other, Valisce remembers.’ <https://www.bbc.com/news/magazine-41349301>, 2 Oct 2017

255 Mossman & Mayhew, ‘Key Informant Interviews’ (2007) CJRC, Ministry of Justice

256 Saphira and Herbert’s 2004 study of 47 workers - from Ministry of Justice <https://web.archive.org/web/20100523011441/http://www.justice.govt.nz/policy-and-consultation/legislation/prostitution-law-review-committee/publications/exiting-prostitution-models/2-exiting>

It should be noted that the Ministry of Health contract with the NZPC does not include any clauses on helping people exit prostitution. Considering the damage to mental and physical health that both the Government²⁵⁷ and the NZPC know women in prostitution experience, this is dangerous and negligent.

11.2 Prevention

The most common reason for entering prostitution is clear: money. Prostitution offers immediate financial reward – especially in the face of deprivation such as a lack of food or shelter. Young people in particular, when at risk of being drawn into prostitution, often face additional problems such as homelessness or the lack of a care-giver. In such situations, the pressure to enter the industry can be intense. Given the decision-making capacity of the brain is not fully developed till around 25, young women may act impulsively with unintended consequences. The encouragement of peers, particularly those living on the streets, combined with even slight amounts of intoxication, can lead to an eradication of previously held boundaries.²⁵⁸

In the 'Key Informant Interviews' report, prepared in 2007 for the Ministry of Justice, the reasons under-18-year-olds chose to enter prostitution were clearly identified.²⁵⁹ The conclusion? All relevant NGOs needed increased funding. The PLRC's 2008 review highlighted the paucity of services for young people and lack of residential care - both due to a lack of funding.²⁶⁰ Sadly, funding is much worse today. In reply to an OIA request in 2018, the Ministry of Social Development said they had no information regarding funding for NGOs for the establishment or continuation of services to provide for those in prostitution, including assistance with exiting.²⁶¹

Although the PLRC's review stated briefly that preventing entry into prostitution should be a key goal, it said the way to do this was by offering potential entrants the same support offered to any young people: helping them find other ways of earning money, promoting education and vocational training, and ensuring they can access support and accommodation.²⁶² No strategy for preventing entry into prostitution has ever been created. No funding for prevention has ever been provided, despite the fact that preventing entry into the sex industry was part of the campaign for reform.

11.3 Opportunities to exit

There are very few supported routes out of prostitution. The OIA above showed no Government funding had been allocated for the provision of exit services, not even for under-age youth. There are few, if any, New Zealand NGOs which focus on enabling people to exit. None provide accommodation, which is considered the essential cornerstone for a successful exit.²⁶³ Furthermore, the NZPC, the organisation given \$1.1m of Government money to assist those involved in prostitution, does little or nothing to support women wishing to exit, despite the

257 Mayhew & Mossman, 'Exiting Prostitution: Models of Best Practice' Ministry of Justice, (Oct. 2007)

258 PLRC report (2008), Table 12

259 Mossman & Mayhew, MOJNZ 'Key Informant Interviews' (2007) section 8.5

260 PLRC report (2008) Section 7.11.2, p111

261 See Appendix 2 item 7, OIA dated 2018 to the Ministry of Social Development and other Ministries

262 PLRC (2009), p64

263 Mayhew & Mossman, 'Exiting Prostitution: Models of Best Practice' Ministry of Justice (Oct 2007), p32, 4.2 Housing

committee which reviewed the law in 2008 stating clearly that ‘providing support to those who wish to exit is more properly a central government role than a local one.’ Not only does the NZPC not support exiting, it stands alone as the only NGO which actively supports the establishment of brothels and assists operators (pimps).

This lack of support flies in the face of the fact that the PLRC found only 15% of women intended to stay in prostitution for more than five years.²⁶⁴ In other words, 85% would exit relatively quickly if they had the opportunity. When asked why they stayed, only 23.5% said they didn’t want to do anything else.²⁶⁵ A sizable number of women are either exiting or attempting to exit each year. Looking overseas, a graphical analysis in the ‘Ministry of Justice’s Key Informants Interviews’ report showed the general rate of those wishing to leave prostitution in other countries was around 65% (i.e., only 35% did not wish to exit the industry).²⁶⁶ One study found only 8% did not want to leave.²⁶⁷

The 2007 CSOM report stated that 51% of the 772 survey participants had stopped their involvement in prostitution at least once.²⁶⁸ The prostitutes’ collective describes these women as taking a ‘holiday break,’ but they need guidance and assistance. They end up returning to prostitution because they cannot find the support they so desperately need. In contrast, in the UK there are a number of organisations which offer dedicated exiting services, as well as traditional ‘harm reduction’ support for women who don’t want to/are not ready to exit, operating on the ethos that there is always hope, and always alternatives, for those who want to leave. These services address a number of the barriers to exiting.²⁶⁹

- lack of finances
- addiction
- absence from employment showing on CVs
- prostitution history on social media
- coercive and abusive partners/pimps
- marginalisation by support services, particularly mainstream ones
- physical and mental health issues
- lack of confidence or belief in the ability to exit

The 2008 law review committee highlighted the fact exiting was often a long and involved process. Support for those who wished to leave the industry should be based on best-practice principles tailored to meet the needs of the individual.²⁷⁰ A recent report by the UK Home Office talked about the uncertainty of prostitution support services in New Zealand, and advised there needed to be ‘multiple routes into services’:

264 PLRC (2008), Table 13 p65

265 Ibid., Table 15 p68

266 Mossman & Mayhew, ‘Key Informant Interviews’ MOJNZ, (2007).

267 Melissa Farley et al. ‘Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder’ (1998) *Feminism & Psychology*.

268 PLRC (2008), Table 14 p66

269 R. Matthews et al (2014)

270 PLRC (2008) List of the Committee’s Recommendations, p18

'Research has revealed some ambivalence about service provision – whether specialised services should be promoted or efforts concentrated on ensuring generic services are accessible to those who sell sex (Mossman and Mayhew, 2007). We suggest that this is a non-issue, since both are necessary; as recognised with respect to domestic violence there need to be multiple routes into services in a co-ordinated response. The need for emergency accommodation to support those wishing to exit was identified in the recent evaluation report (PLRC, 2008).'²⁷¹

Since then, best practice has been further developed in the UK, particularly as the result of the work between Lambeth Council and an NGO, in which the provision of accommodation was the key to success.²⁷²

Work and Income NZ (the Government department known as WINZ) does not use a stand-down period for prostitutes exiting the industry. This means that a benefit can be accessed straight away upon ceasing work in prostitution, or even while still reducing weekly hours. Neither does the department offer prostitution as an alternative employment opportunity. Since they already treat prostitution as a special case, it would be helpful if WINZ provided and demonstrated exit support and subsequent training opportunities for those in prostitution.

11.4 Hostility towards exited women

Pro-prostitution groups have long tried to undermine women who identify as survivors. Just one example is Sabrina Valisce, a former NZPC volunteer who campaigned for decriminalisation alongside the collective for 25 years, but who later regretted doing so:

"I thought it [the PRA] would give more power and rights to the women but I soon realised the opposite was true."²⁷³

After Valisce had spoken at a meeting in Townsville, NSW, highlighting the harm caused by the sex industry, several Scarlet Alliance²⁷⁴ supporters cornered her, circling around about five feet away, and then closed in, shouting at her in unison.²⁷⁵

In New Zealand, researcher Janice Raymond found the NZPC was consistently hostile towards prostitution survivors:

'NZPC activists especially attack women who testify publicly about their experiences of being harmed and violated in prostitution. They confront writers and advocates who present evidence of the harm and instead, they respond with personal attacks and public disruptions.'²⁷⁶

271 L. Kelly et al. 'Shifting Sands' (2009), p44

272 Easton, H., Matthews, R, 'Evaluation of the Chrysalis Project: Providing Accommodation and Support for Women Exiting Prostitution' (2014) University of Kent, http://www.rogermatthews.net/images/research/chrysalis_final_report_261012.pdf

273 Julie Bindel, *The Pimping of Prostitution*. London: (Palgrave Macmillan 2017) p101

274 The Scarlet Alliance is Australia's national prostitutes' association

275 Bindel (2017) p318

276 Raymond (2018) p9

It's not just former prostitutes who come under fire from the prostitutes' collective. Raymond found that anyone who dissented from the NZPC 'orthodoxies' about prostitution and trafficking, for example Wellington blogger Renee Gerlich, could be subjected to vilification campaigns:

'The collective has employed tactics of bullying, smearing and no-platforming of feminist critics and prostitution survivors who disagree with the Collective's valorization of "sex work."²⁷⁷

On social media worldwide, many survivors and their advocates have been misrepresented or subject to vitriol for speaking negatively about the industry.²⁷⁸ Thus while some survivor voices are heard, others are drowned out by those in support of the industry shouting the loudest.

²⁷⁷ Ibid., p1

²⁷⁸ Bindel, p319

12. The Use Of Under-Age Youth In Prostitution

12.1 The extent of under-age prostitution

The reality of prostitution is that young people are the most sought after: a steady stream of young women and children are being abused in prostitution.²⁷⁹ Hard data is hard to come by, but two decades ago a Ministry of Social Development paper was already citing concerning figures:

'In a recent study of 303 prostitutes in the Christchurch area (Plumridge and Abel 2001), 31% said they had begun sex work under the age of 18 years. Since it is illegal for massage parlours to employ under-18-year-olds, this would suggest that about a third of the workers began sex work on the street.'²⁸⁰

An ECPAT NZ study from 1998-2001 identified 194 child prostitutes. Of these, 10% were 12-years-old or under, 15% were 13, 20% were 14 and 30% were 15.²⁸¹

In a New Zealand Herald article in 2010, a police officer, a government official, the mayor of Auckland and the organisation Streetreach all reported an increase in under-age prostitution.

Streetreach manager Debbie Baker said she knew of at least 12 girls between the ages of 11 and 15 selling sex in the CBD alone.

"Young meat earns a lot of money," said Ms Baker. "Underage prostitution has always been a problem, but there is an increase. We're seeing more and more young girls out there."²⁸²

The spokeswoman for the NZPC downplayed the increase, however, saying that they had not come across any girls as young as 12 in a long time. She said older women on the street discouraged children from working as prostitutes because it was "not good for business."

In response to a police request, the collective reported that in the year to June 2010 they had been in contact with only 18 under-age prostitutes out of 219, across both Manukau and the Auckland CBD – a total of 8.2%.²⁸³ This figure is extremely low by international standards, or even by the NZPC's own figure for street prostitution: the CSOM report, conducted in partnership with the collective, found 18.3% of women entered the industry via street work before the age of 18.²⁸⁴ The graph below highlights the variation in the data. Significantly, the 8.2% provided to the police was even less than the CSOM figure for indoor prostitution. However, in addition to the possible use of dubious methodology, there are a number of factors that affect count data.

279 Josh Gale, 'Girls of 12 Working in "Young Red Light Area", Say Police', NZ Herald, 11 June, 2010

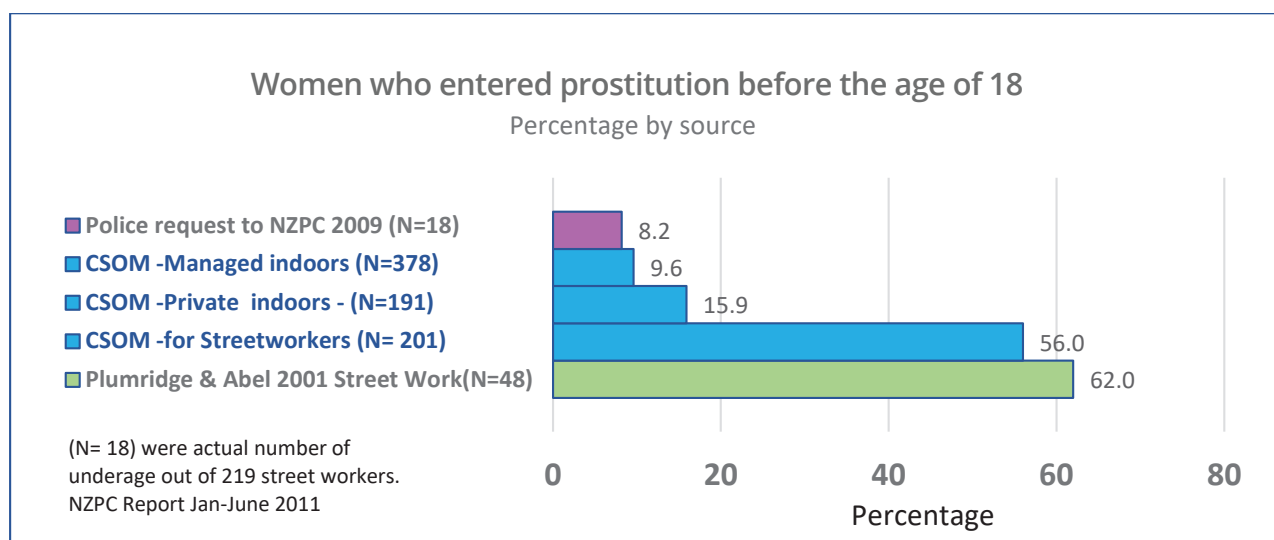
280 Ministry of Social Development 'A Review Of Literature On Child Prostitution' (2002) under 'Age at Entry into Sex Work' <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/journals-and-magazines/social-policy-journal/spj19/review-literature-child-prostitution19-pages141-163.html>

281 Saphira, M. 'The Commercial Exploitation of Children,' (2001) ECPAT, Auckland

282 Josh Gale, NZ Herald, 11 June, 2010

283 NZPC report Jan-June 2010, Appendix 3: Advice to the police in regards to questions about underage sex workers p73 (the reports miscalculated the total as 229)

284 CSOM 2007, G. Abel et al. p61, Table 4.6, under Street Workers (9.0 + 9.3 = 18.3%)



One of the issues making it difficult to quantify under-age prostitution is that a young person may not self-define as being involved in the industry. People who exchange sex for drugs, food or accommodation often do not label it 'prostitution'.²⁸⁵ Young women who have paid sexual 'relationships' with rich, older men – as 'sugar daddies' - may not consider themselves to be prostituting either. The NZPC has recently started including sugar-daddy scenarios in its reports, recognising that such arrangements are becoming more common.²⁸⁶ However while they call such women 'sex workers,' the fact they may be under-age tends to be glossed over.

Many under-age girls in prostitution are unaccounted for: small owner-operated brothels (SOOBs), for example, are not subject to any controls, with only immigration officials having limited right of entry. And while homeless youngsters are easily lured into the prostitution, a large number of under-age girls remain living in secure homes, with relatives, friends or parents. In this situation, and by finding clients using social media, under-age girls in the industry may not be visible on the streets.

Other under-age girls are controlled by gangs, rendering them, too, off the radar²⁸⁷ of the NZPC and other officials. The dearth of research and information on young people in prostitution²⁸⁸ was well known prior to legislation, and it is unconscionable that the NZPC did not specify the need to compile data on under-age prostitution in its Programme Logic framework.

It is important to note that the distinction between 'under-age' and those who have reached the age of 18 is a blurred one²⁸⁹. The same vulnerabilities present in an under-age girl will be present even once she has reached young-adult status. The impact of abuse remains momentous after the age of 18. Therefore, any approach to under-age prostitution should also include young people under the age of 25, in recognition of the ongoing impact on young adults. Since it is difficult to judge the age of young women, this would also assist reducing discrimination.

Authorities like the police and Oranga Tamariki seem reluctant to take action when girls are over 16 but under 18.²⁹⁰ According to anti-child-prostitution organisation ECPAT, NGOs were reluctant

285 PLRC 2008 report item 7.4.1. page 101

286 NZPC report Jan-July 2019

287 Refer to item 12.4 in this report

288 Miriam Saphira and Pam Oliver, 'A Review of Literature on Child Prostitution' (2002) Social Policy Journal of New Zealand.

289 The age for consensual sex is 16, but the age for commercial sex is 18 - before which they are termed under-age

290 Martin van Beyen, 'Sex trade preys on wayward teens', Stuff, December 11, 2010

to acknowledge or discuss girls 16-18 involved in commercial sex; it appeared there was a tacit agreement between them that this was an area the NGOs need not get involved with.²⁹¹ It seems that these older girls are treated as a 'twilight scenario'. This was confirmed by Catherine Healy when talking about the abuse clients were receiving from vigilantes:

"We're really upset this is happening...it's harassment. The men aren't law breakers, assuming they are seeking someone over the age of 16."²⁹²

It is possible, therefore, that the under-reporting of numbers may be augmented by the fact that while it is illegal to use 16 to 18-year-olds for commercial sex, the legal age for consensual sex is 16, i.e., the NZPC does not include those over 16 in its figures.

12.2 Preventing under-age prostitution

The committee which reviewed the law reform made it clear that one of the aims of the legislation was to prevent under-age prostitution in the first place:

'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.'²⁹³

The PRA was intended to shift criminal liability on to those who abuse young people: 'those who arrange, profit from, or receive those services.'²⁹⁴ It recognised the exploitative nature of prostituting under-18-year-olds, with an offence liable to up to seven years imprisonment. The prostitution of the under-aged is considered an extremely harmful crime, as recognised by the committee which reviewed the law:

'...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.'²⁹⁵

The committee reviewing the law in 2008 held that the best way to identify and support young people at risk of entering prostitution was through NGOs and Government-funded community groups already working with at-risk young people. In January 2018, Oranga Tamariki²⁹⁶ staff replied to an OIA request regarding the funding provided to NGOs specifically for work with at-risk youth: there was no information available, they said, because 'this particular group is not specified as a target group in documents.'²⁹⁷ Given that New Zealand research shows that between 18%²⁹⁸ and 30%²⁹⁹ of prostitutes in New Zealand enter the industry before they turn 18, there is a clear need for at-risk youth – particular those in the under-age bracket – to be considered a target group and numbers monitored.

291 Discussion with ECPAT at their offices in Henderson, Auckland

292 NZPA, 'Community group squares off with street prostitutes' NZ Herald, 19 April 2009

293 PLRC (2008), p99

294 Ibid., p99

295 Ibid., p104

296 Oranga Tamariki is the New Zealand Government's Ministry for Children

297 OIA dated 17th January 2018 to the Ministry for Children

298 CSOM 2007, G. Abel et al. Table 4.6 p61. (9.0 + 9.3 = 18.3%)

299 Plumridge & Abel 2001, Table 3

Meanwhile, the legalisation of pimping – rebranding exploitative pimps as ‘entrepreneurs’ or ‘managers’ – has opened the door for pimps to fuel prostitution numbers at all levels. Pimps target vulnerable young women and feed them to the industry. The 2021 ECPAT New Zealand report ‘Speaking For Ourselves’ provided a platform for under-age people in prostitution to talk about their experiences. The 13 young people interviewed for the report had histories of family violence, sexual abuse and neglect, as well as violence, rape and drug or alcohol misuse while working in the industry. A more recent report describes Auckland children selling their bodies from the age of 12³⁰⁰ – and charging extra to allow themselves to be strangled or choked while having sex.³⁰¹

According to the committee which reviewed the law, ‘all measures should be taken to divert under-age people from entering the sex industry as a means of survival.’³⁰² But despite the existence, and obvious harms, of under-age prostitution, they also made the following comments, demonstrating that the nature of under-age prostitution as a form of abuse was not fully acknowledged – and that these children were not being adequately supported:

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...

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.³⁰³

The NZPC recognises that young people do not want to admit they engage in ‘survival sex work’ and that they would rather steal or do anything but sell their bodies for enough to eat or a place to stay.³⁰⁴ However, even using terms such ‘survival sex’ tends to minimise the fact that it is abuse. Further, as discussed below, the NZPC frequently denies the links between gangs and prostitution. A full acknowledgement of the existence of under-age prostitution, and the reasons for it, is essential if vulnerable young people are to be discouraged from entering the industry.

12.3 Grooming

Teenagers and children are preyed upon by gangs and pimps,³⁰⁵ using grooming techniques to draw them into prostitution. Pimps frequent places where homeless or marginalised girls can be found; in fact, a conservative estimate is that at least 20% of those who become homeless will end up abused in prostitution.

Grooming techniques include showering a girl/young woman with affection and gifts, a sexual ‘relationship’ (consent being void when a girl is under-age), introducing increasingly degrading sexual acts to break down boundaries³⁰⁶ and isolating them from others, perhaps even moving

300 Seven Sharp, “‘Kids selling themselves for sex from 12” – NZ’s secret world of child prostitution’, TVNZ, 8 July, 2015

301 Natalie Thorburn, ‘Consent, coercion and autonomy: underage sex work in Aotearoa New Zealand,’ Aotearoa New Zealand Social Work 2016 28(1), 34–42

302 PLRC (2008), p104

303 Ibid.

304 NZPC report Jan -June 2010, Appendix 3, p77

305 Holger-Ambrose et al., ‘The Illusions and Juxtapositions of Commercial Sexual Exploitation among Youth: Identifying Effective Street-Outreach Strategies’ (2013) Journal of Child Sexual Abuse

306 Natalie Thorburn & Irene de Haan, ‘Children and Survival Sex: A Social Work Agenda’ (2014), Aotearoa New Zealand Social Work 26(4), p17: ‘the process of ‘love-bombing girls’

locations. A young woman thus groomed is subsequently coerced into prostitution while she is dependent on the relationship, while her self-esteem is low and while she will do anything for the pimp, whom she may believe is her 'boyfriend'.³⁰⁷

Grooming has become more frequent, and more serious, due to the ability to manipulate young people online.³⁰⁸ In 2019, *The Telegraph* in the UK revealed the number of cases in which paedophiles had contacted children online had soared by a third in the previous year. Up to 100 girls a day, as young as 11, were 'self-filming' sexual video clips.³⁰⁹

A Scottish Government report in 2016 stated that the anonymity and control made possible by technology - phones, messaging, gaming software – put a far larger group of young people at risk of being manipulated into prostitution, including those not previously considered vulnerable.

The same report found young people – both under and over the age of 16 - in state care and other vulnerable backgrounds were also targeted:

'We heard evidence of the payment for sex from people from vulnerable backgrounds and settings (e.g., looked after and accommodated children, young adults and other vulnerable people)...child protection and health workers were aware of the "grooming" of people for sex from these backgrounds.'³¹⁰

Child protection workers found the grooming typically involved informal and manipulative arrangements: 'networking' through friends and acquaintances, arranging parties, gradually introducing people to alcohol, drugs and sex, peer abuse and using gifts or payment in kind for sexual services. This type of involvement, where the girls work from home in small customer networks,³¹¹ has been prevalent in the Netherlands for several years.

12.4 Policing and support

Policing under-age prostitution is challenging – not least due to the fact officers are not legally allowed to ask a young-looking street worker for ID. Police asked the committee reviewing the law in 2008 to consider an amendment giving them the power to ask for identification from anyone they suspected was under-18 and providing commercial sexual services. The request was declined:

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.³¹²

307 Karly Church, 'Domestic Sex Trafficking - a Survivor's Perspective' TED Talks (2019); Anne-Marie McAlinden, "'Setting'Em Up": Personal, Familial and Institutional Grooming in the Sexual Abuse of Children' (2006) *Social & Legal Studies*

308 Bryce Garreth Westlake, 'The Past, Present, and Future of Online Child Sexual Exploitation: Summarizing the Evolution of Production, Distribution, and Detection', *The Palgrave handbook of international cybercrime and cyberdeviance* (2020)

309 Martin Evans, 'Girls as Young as 11 Are Filming Themselves "Performing Sexually" at Home as Figures Reveal over 100 Cases a Day' *The Telegraph*, 14 September, 2019

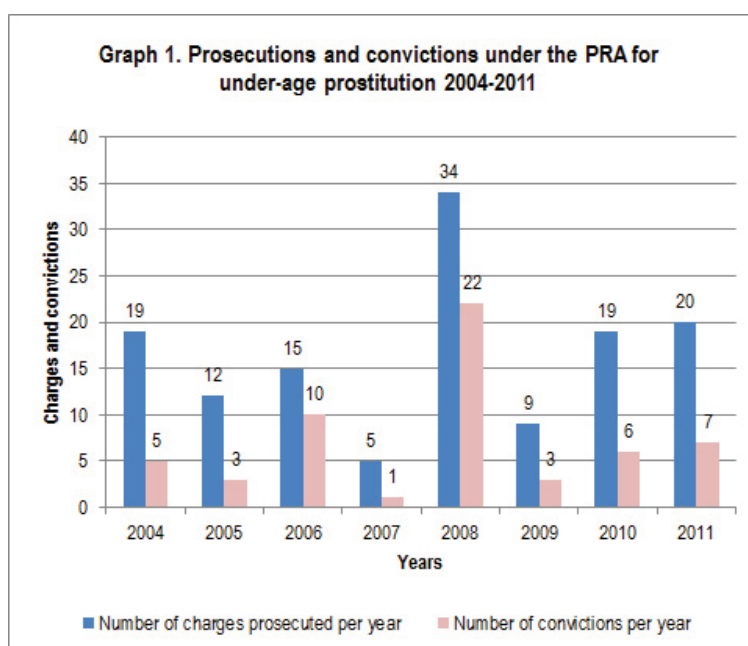
310 Social Research department, Scottish Government 'Exploring Available Knowledge and Evidence on Prostitution in Scotland via Practitioner-Based Interviews' (2016), p49

311 Daalder, A.L, 'Prostitution in the Netherlands in 2014' Netherlands Ministry of Justice p23; Anthony Marcus et al., 'Conflict and Agency among Sex Workers and Pimps: A Closer Look at Domestic Minor Sex Trafficking.' (2014) *The Annals of the American Academy of Political and Social Science*

312 PLRC (2008), p112

Officers are, however, entitled to *ask* someone's age. In January 2008, the police conducted a two-week operation in Manukau, picking up 16 under-age youth actively engaged in offering commercial sexual services on the streets. Some were also living in gang homes, where they were controlled by pimps who exchanged sex for accommodation, food and drugs.³¹³

As with the Roast Busters scandal discussed earlier, there appears to be a level of impunity for this form of child abuse. Notable examples include the arrest of an Auckland operator who trafficked a 15-year-old girl, raped her and then advertised her online for an escort agency.³¹⁴ The operator was jailed for only two years and 10 months. A Christchurch brothel owner was given home detention in 2009 for pimping girls aged 14 and 16.³¹⁵ These are cases which resulted in arrests; it is clear that many do not. The insignificant number of offenders identified are frequently given home detention or evade prosecution. From 2004 to 2011, there were 133 charges and 57 convictions (7.1 per year) for under-age prostitution under the PRA.



Given little to no Government funding has been specifically allocated to at-risk youth, it would appear that the PLRC's recommendation #17 – to increase funding for NGOs working with at-risk youth, in order to assist those at risk of entering prostitution – has been ignored. Recommendation #19 stated that the Ministry of Social Development should ensure that any at-risk young person who comes forward, or who is referred to them, should be adequately supported – to prevent her from being used in prostitution in order to survive.

The NZPC – the only NGO actively involved with prostitution - reports providing support for those who come to its attention, mainly by passing them to social services. Sadly, many children who are in need are excluded from support by social services, meaning they are not able to access housing or other lifesaving provisions: some girls are on the run from state care; some are too young to get the Independent Youth Benefit; others are being prostituted by gangs – a group the NZPC

313 NZPA, '25 Arrested Over Underage Prostitution' New Zealand Herald, Jan. 24, 2008

314 Sam Hurley, 'Auckland Couple Flew Under-age Teen into City to Work as Prostitute' New Zealand Herald, 10 Sept, 2018

315 'Christchurch brothel owner loses name suppression', *Stuff*, January 31, 2009, <http://www.stuff.co.nz/the-press/news/our-communities/271261/Christchurch-brothel-owner-loses-name-suppression>

does not have any contact with, given their denial of the link between gangs and the sex industry.

A further problem is that many young people do not trust Oranga Tamariki and other Government agencies³¹⁶ because of having been passed from one carer to another. This prevents a trusting relationship from developing between the girl and a particular carer.³¹⁷ The overall failure to support vulnerable young people in New Zealand is fully covered in in an ECPAT NZ paper, 'Children and Survival Sex: A social work agenda'.³¹⁸

316 Holger-Ambrose et al. (2013), trust is imperative in providing help to young people who have been abused

317 Abel G, Whahab S, "Build a friendship with them": The discourse of "at-risk" as a barrier to relationship building between young people who trade sex and social workers' (2017), Child & Family Social Work 22:1391–1398

318 Natalie Thorburn & Irene de Haan (2014)

13. Immigration And Trafficking

13.1 Visas for prostitution

Originally, the NZPC drafted a law which allowed overseas migrants to prostitute in New Zealand, but the political consensus was that this would facilitate illegal immigration and trafficking. Limitations were therefore put in place as part of the eventual law reform: non-residents were not permitted to work in prostitution. However, countries with legalised and fully decriminalised prostitution, like New Zealand, remain attractive to traffickers. Victoria's Drugs and Crimes Prevention Committee concluded in 2010 that there was 'a clear and close connection between sex trafficking and the legal and unregulated sex industry.'³¹⁹

Due to bad publicity³²⁰ over 2018-2019, immigration was forced to implement tighter controls, but even the prostitutes' collective estimates 20% of those involved in prostitution are doing so illegally.³²¹ In its six-monthly reports, the NZPC acknowledges illegal immigrant prostitutes are more likely to offer unsafe sex and more extreme sex acts, both of which enable them to get more work. Over the years there has been plenty of evidence that migrant workers are being mistreated, have little protection against violence and exploitation, are disadvantaged by a lack of access to financial services and are often unable to advocate for themselves because of the language barrier (which resulted in the prostitutes' collective employing interpreters).³²² They may be understandably reluctant to report violence or abuse to authorities because of distrust or the fear of being deported.

The NZPC argues that those prostituting illegally would be safer if the law were amended to allow them to operate, because they could then take any complaints to the police. This ignores the results of their own survey, which found that less than 20% of New Zealand prostitutes – those with legal work status – reported violence and abuse to police.³²³

Despite this, the collective has been running a vigorous campaign to overturn clause 19 of the PRA, to allow immigrants or those on temporary visas to prostitute. In 2018, NZPC staff hosted a forum on migrant workers with the Ministry of Business, Innovation & Employment (MBIE)³²⁴ and NGOs – and made reports to news outlets in favour of allowing non-nationals to prostitute. They also persuaded the Equal Employment Commissioner, Dr Jackie Blue, to take the issue up with CEDAW (the Committee on Elimination of Discrimination Against Women) in Geneva. Later the same year they gave an oral presentation to the United Nations.

A recent study³²⁵ commissioned by the MBIE interviewed only 11 prostitutes but found incidents of them not being paid, having passports confiscated, and, in one case, rape. The researchers supported the NZPC's call for migrants on temporary visas to be able to prostitute legally – a move which would enable an influx of prostitutes for large business events. However, in spite of

319 Drugs & Crime Prevention Committee, 'Inquiry into People Trafficking for Sex Work', Parliament of Victoria (2010)

320 Reidy, Stuff (2018), 'A 24-year-old Chinese former prostitute with permanent residency who did not want to be named, estimated about 40 per cent of all sex workers in New Zealand were on temporary visas.'

321 NZPC Report Jan-June 2018, p12

322 NZPC Report July-Dec 2010, p33, and in other NZPC reports generally

323 G. Abel et al. CSOM (2007), University of Otago, p120, table 6.4

324 NZPC Report Jan-June 2018

325 Abel & Roguski (2018)

the findings of rape and exploitation, the study emphasised that most prostitutes were in 'safe employment situations' and had chosen the job in order to study or travel, 'rather than being desperate, exploited or trafficked.' In an article³²⁶ about the study, the NZPC's Catherine Healy said that while the collective was in touch with thousands of migrant workers³²⁷ every year, 'we haven't come across that sex worker who says, "help me get out of here."' This 'nothing to see here' stance – and the overall emphasis of the study – flew in the face of other research, for example, that of Auckland University researcher David Ting, who interviewed 20 Auckland-based Asian women involved in prostitution for a sociology study. Half were in New Zealand on temporary visas and most of them told Ting they had been threatened with deportation by brothel owners.³²⁸

In 2018, a group of 26 resident prostitutes publicly rejected the NZPC's calls for allowing migrants on temporary visas to enter the industry here, saying 'no legal New Zealand sex worker wants this.'³²⁹ They raised the concern that even present immigration laws were not being upheld.

13.2 Trafficking

For many years – up until 2015, in fact – New Zealand officials maintained the country did not have a human trafficking problem. The annual *US Trafficking in Persons* report has long identified the problem in this country, but until recently it has been denied or ignored by the New Zealand Government. This was largely because, in contrary to agreed international definitions such as the Palermo Protocol,³³⁰ Government officials defined trafficking as only that involving cross-border movement. The global definition, however, includes internal as well as trans-national trafficking.³³¹ human trafficking is the trade in people, using deception or control, and does not necessarily involve the movement of the person from one place to another.

By international standards, acts such as withholding someone's papers or passports, pimping a child and not allowing a prostitute to refuse a client are all classified as human trafficking. The NZPC has documented many of these offences. National coordinator Catherine Healy admits pimps have 'almighty power' over illegal migrant prostitutes,³³² but maintains there has been no evidence of trafficking in New Zealand.³³³ Instead of addressing the issue, the prostitutes' collective denies its existence and continues to publicise the attraction of a 'working holiday'.³³⁴

The existence of trafficking has been covered extensively in articles such as 'Exposed: The Dark Underbelly Of Human Trafficking In New Zealand', which described the trafficking of teen and under-age girls.³³⁵ In April 2018, on a Newstalk ZB talkback show,³³⁶ a caller related the story of

326 Joel Ineson, 'Calls for Legal Migrant Prostitution after Research Finds Some Exploited,' *Stuff*, 10th Oct, 2018

327 It is worth noting that this statement contradicts the NZPC's frequent claims that there are only 2332 women involved in the industry in New Zealand, yet in the NZPC report for Jan-June 2018 they estimate 20% are migrants

328 Reidy, *Stuff* (2018)

329 Lincoln Tan, 'NZ Sex Workers Write Open Letter to Government Asking for a Minister of Prostitution' *New Zealand Herald* 11 June, 2018

330 UN, 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime', 15 November 2000 <<http://www.unhcr.org/refworld/docid/4720706c0.html>>

331 Carville, *New Zealand Herald*, (2016)

332 Reidy, *Stuff*

333 Catherine Healy et al. *Women's Studies Journal* (2017) 'It's Work, It's Working: The Integration of Sex Workers and Sex Work in Aotearoa/New Zealand' (2017), 1

334 Anna Reed, 'Foreign Prostitutes Heading to NZ Illegally' (2016) <https://www.rnz.co.nz/audio/player?audio_id=201821623>. at 28 mins

335 Carville, *New Zealand Herald* (2016)

336 Andrew Dickens, 'Has Our Prostitution Reform Gone Too Far?' *NewstalkZB*, 18th April, 2018 <http://www.newstalkzb.co.nz/on-air/andrew-dickens-afternoons/audio/andrew-dickens-has-our-prostitution-reform-gone-too-far/>

negotiating to buy a brothel in Auckland. It was full of Asian girls - and being sold on the proviso that the seller would continue to supply the women, since he imported them into the country. When the buyer asked about visas, the owner said the women didn't have them but that they would go into a hidden room in the brothel whenever there was a raid by immigration. They were tipped off every time this was about to happen. The story was confirmed by an ex-sex worker who phoned the show later.

It is worth noting that immigration officers are the only officials who can enter any premises, be it a brothel or private premises, without a warrant - i.e., who can make a 'surprise visit' - to serve or execute deportation papers. The way they work, however, is by responding to complaints; they do not proactively seek to identify and stop illegal activity. In 2017, in reply to an OIA requesting information on visits immigration made to brothels - the evidence found and action taken - the MIBE said it was too difficult to collate or research.³³⁷

However, as a result of the push by the NZPC to allow individuals on temporary visas to prostitute legally, Immigration New Zealand (INZ) has been under pressure by the media to provide information. A report in June 2018 said the department had served deportation notices on 38 illegal prostitutes in the previous three years, as part of a crackdown on illegal visas.³³⁸ Newshub reported 27 were illegal Asian migrants.

Another Newshub investigation revealed 481 foreign women involved in prostitution had been refused entry into the country between July 2015 and May 2019 - with a further 43 prevented from boarding flights to New Zealand.³³⁹ Immigration NZ said at the time it was cracking down to protect vulnerable women from being trafficked into New Zealand. A prominent brothel owner told the investigation that she knew trafficking occurred - and that it was worse in Auckland - while a South Island operator confirmed illegal prostitutes were in the country: they didn't speak much English and were unaware of New Zealand's regulations.

Significantly, in a 2018 Newshub report, the immigration department admitted an incidence of providing inaccurate information.³⁴⁰ It had originally claimed eight complaints between December 2014 and March 2018, but this was later revised to 57. Overall, the extent of trafficking in New Zealand remains difficult to determine, but it is clear the problem exists - along with an environment which supports it.

337 OIA Dec 2017 to MBIE, see details in Appendix 2, Item 3

338 Laura Walters, 'Immigration New Zealand Deports Migrants Engaging in Illegal Sex Work' *Stuff*, 6 June, 2018.

339 Mitch McCann, 'Revealed Hundreds of Suspected Sex Workers Stopped at NZ Border' Newshub, 5 June, 2019. Accessed 31/07/2021 <https://www.newshub.co.nz/home/new-zealand/2019/06/revealed-hundreds-of-suspected-sex-workers-stopped-at-nz-border.html>

340 Sophie Bateman, 'Immigration Admits Underreporting Migrant Sex Worker Complaints' Newshub, 14 May, 2018 <<https://www.newshub.co.nz/home/new-zealand/2018/05/immigration-admits-underreporting-migrant-sex-work-complaints.html>>

14. Commentary

The authors have formed the following views after reviewing the preceding information.

14.1 The accuracy of earlier reservations

Many MPs had misgivings about supporting the law reform. They stated that nothing in the proposed Prostitution Reform Act increased the protection of the human rights of any prostitute. In particular, they claimed the legalisation of pimps, who were previously classified as criminals, along with simultaneously putting constraints on the police, made it doubtful the law could be enforced. These concerns have been fully vindicated.

14.2 Misrepresentation by the NZPC

Ever since the NZPC framed the terms of the PRA, it has been evident that their intention was to develop 'a sex industry', rather than to genuinely look after the wellbeing of prostitutes. The leaders of the collective fail to acknowledge that the majority of women want to exit the industry, so they objectively represent a third of the workers at most. While they are able to cover health and safety education, their bias disqualifies them from providing an objective view regarding policy requirements for the industry. As demonstrated in this report, they play down the difficult realities of prostitution, such as violence and coercion, and deny the existence of issues such as trafficking and gang-related prostitution. While recognising that immigrants on temporary visas selling sex are breaking the law, the NZPC is campaigning vigorously for this law to be changed. They have also made false portrayals overseas of the reality of prostitution in New Zealand.

14.3 Lack of monitoring and controls

The NZPC has failed to collect accurate data on the numbers of people involved in prostitution – information which is critical for monitoring trends and setting future policy. This is a blatant failure to fulfil the obligations of the collective's contract with the Government, but no one is monitoring the NZPC's performance: an OIA request found the Ministry of Health did not keep track of the collective's contracted obligations.³⁴¹ It appears there has been a significant increase in the number of people involved in prostitution, but solid data is lacking.

Important controls promised by those who advocated for the law reform have never been implemented. The PRA 2003 was meant to deter people from entering the industry and help prevent under-age prostitution. None of this has happened. It was also meant to make leaving the industry easier – but true support for those wanting to exit prostitution is virtually non-existent, particularly for critical or long-term needs such as accommodation. The table in Appendix 1, showing recommendations by the review committee and progress made towards putting them into place, shows that none of these controls were progressed by the Government ministries responsible. It is apparent that the decades-long influence the NZPC has had on ministry officials – along with the biased review from the PLRC – has engendered a level of complacency. Why else would the statutory requirement for brothel inspections be ignored? Why else would there be no follow-up regarding reported incidences of coercion by pimp operators?

³⁴¹ Appendix 2: OIA Summary List, item 13

14.4 The impact of legalised pimping

Pimps are effectively free of constraints and in control of the industry. Pimping is legal; police have been excluded from premises³⁴² where prostitution is taking place; and out on the streets, officers are no longer able to ask for ID from girls who may be under-age. This has given operators greater freedom to groom. The NZPC assists the work of brothels and pimps under the guise of supporting the health and safety of the workers. While they maintain that the law reform means girls are able to call on police support, this has proved hollow: women are reluctant to report violence or coercion, knowing that any publicity may crucify future employment opportunities.

14.5 No support for vulnerable people prostitution

The NZPC has redefined the idea of support for the needy and vulnerable to one of helping people to start and stay in prostitution. It promotes brothel start-ups and assists pimps with business planning, whilst failing to provide specific help for those wishing to exit the industry. With the environment now controlled by pimps/operators, some of them abusive, many women 'stay with their lot,' and won't try to exit, because they have little hope of succeeding without massive assistance. Now that the flow of those exiting has been quantified at more than 1500 people per year, the size of the problem in terms of human suffering should demand investigation of the impact of the PRA 2003.

14.6 Internet porn and violence.

New Zealand has one of the highest rates of sexual and domestic violence in the developed world. Pornography plays a large part in this scourge – and it is no surprise that violence frequently impacts those involved in prostitution. Pornography usage creates the desire for not only more objectional sex acts, but also for violence such as strangulation. Clients frequently demand that prostitutes replicate these unsafe acts and/or submit to assault.

Children and teenagers viewing porn believe that what they see is normal adult sex.³⁴³ It is a short distance to then be groomed into prostitution, especially for those who are already vulnerable.

342 Police can gain entry only if they have sufficient evidence to convince a judge to provide them with a search warrant.

343 Jordan J, 'Policing Sexual Violence: Key Informants Women, Rape and the Police Investigation Process', Institute of Criminology, Victoria University of Wellington, key findings: "concerns were raised over the role of pornography in sexual offending, and how it encourages young people to view potentially injurious and non-consensual behaviours as 'normal'"

15. Recommendations

These recommendations are specific to the political and policy context in New Zealand. They are not an endorsement of the policy framework itself.

15.1 Improved practice

- The 28 recommendations outlined by the Prostitution Law Reform Committee (PLRC) in 2008 should be acted upon. See Appendix 1 for a list of these recommendations, at least half of which have not been implemented.
- Police should be specifically trained to deal with women and children in prostitution, as well as with gang-members involved in the industry.
- Name suppression should be available for sex industry workers who report violence to police - before, during and after a court case.

15.2 Amending and implementing the law

- Brothels and pimping should be again made illegal. Legalising pimping has allowed the so called 'management system' to continue the coercion and abuse that occurred before the PRA. The 2003 law reform has done virtually nothing to improve the health or safety of the women, as demonstrated by unacceptable rates of coercion and abuse - and the lack of prosecutions. In fact, it has prevented charges being brought by women because the pimps doing the coercion are usually their bosses.
- In order to thus amend the law, a suitable lead-up period should be given - for example, two years.
- Until such time as pimping is made illegal, the procedure specified in the PRA regarding brothel inspections should be adhered to and carried out - on a random and pro-active basis.
- SOOBs with the number of workers clearly defined should be retained, but should be readily accessible for inspection.
- A new certification system for SOOBs should be implemented - one which includes an agreement that inspections will take place and which specifies the address of the property on the certificate. A register of the addresses should be held by the court, accessible only to Government agencies.
- The contract between the NZPC and the Government should be monitored, with required outcomes clearly set out in order to justify the funding the NZPC receives. The contract should be specifically for, but limited to, health education and clinical services – areas in which the collective does good work.
- In recognition of the fact the NZPC is a lobby group with a vested interest, all monitoring and evaluation of prostitution, and of the impact of the law, should be carried out by independent researchers. A review is overdue.

15.3 Child sexual exploitation

- Children and young people should be better protected, through education – on issues such as grooming – and, more widely, through the promotion of healthy relationships, particularly with regard to the behaviour of men towards women in society. The Government's recent online safety campaign, 'Keep It Real Online'³⁴⁴ is a move in the right direction.

344 'Government's online safety campaign features "porn stars"' NZ Herald, 11 June, 2020 <https://www.nzherald.co.nz/lifestyle/governments-online-safety-campaign-features-porn-stars/WECZ2NNYEVHMHD4NWBBGMZ65WY/>

- Presupposing some retention of the PRA 2003, a preventative approach should be adopted: challenge the normalisation of prostitution through education in schools, to reduce demand and raise awareness of the realities of prostitution.
- Maximum sentences should be utilised for the perpetrators of child sexual exploitation – and police should proactively seek to identify and prosecute perpetrators.
- The law should be amended to allow police to proactively check the age of people working as prostitutes if they look under 25 – as per the police request in 2008 to the committee reviewing the law.
- Since between 18% and 30% of those working in prostitution have been shown to start before the age of 18, this age-group should be targeted for data collection in order to establish trends. This should have been done already by the NZPC under the terms of their contract.
- Targeted accommodation and general support should be provided for under-age youth, with social support from consistent care-givers rather than risk management. Follow-on support should be provided for 18 to 21-year olds.

15.4 Trafficking

- Acknowledge the problem of domestic trafficking and bring the definition of trafficking in line with the Palermo Protocol.
- Proactively investigate brothels and seek information where trafficking is suspected.
- Section 19 of the PRA 2003, which makes it illegal for migrants or those on temporary visas to work in prostitution, should be upheld.

15.5 Exiting and prevention

- Funding and resources should be established for preventing entry into prostitution; this is the most effective health and safety measure possible. Particular focus should be on funding programmes for those under 21, especially children.
- At present there are no NGOs which could run the type of exiting programme proven successful overseas. Funding should be provided for specific resources to be set up and for training of support workers.

15.6 Pornography

- Programmes to raise awareness about the impact of pornography should be set up and funded, including specific help for those wishing to stop using it. While the 'Keep It Real Online' campaign has made a start on public awareness, those clicking on a link to 'get help' are taken only to general helplines. Currently there are no organisations set up specifically to help those struggling with pornography.

16. Appendix

16.1 Appendix 1. PLRC recommendations and progress towards implementation

Number	PLRC 2008 page	PLRC report chapter and recommendation item number	Recommendation	Implemented
Chapter 2		Estimation of the Number of Sex Workers in New Zealand (Chapter 2)		
1	41	1	The New Zealand Prostitutes' Collective (NZPC) is to maintain the databases of street-based sex workers created by outreach workers in Auckland, Wellington and Christchurch	Publicly NO, but unofficially a text-based system exists
2	41	2	NZPC to monitor numbers of brothel-based workers and SOOBs	NO
3	41	3	Any future research into prostitution in New Zealand should focus on the health and safety of sex workers, their employment status and human rights, rather than solely on the number of people involved in the industry	ONGOING, for example this report by T. Pitt/ SASE
Chapter 3		The PRA and Human Rights (Chapter 3)		
4	47	1	Information on the legal right to refuse a client should be made clear in information provided to brothel operators upon application for a brothel operator's certificate	YES
Chapter 4		Health, Safety and Well-being (Chapter 4)		
5	59	1	The Occupational Safety and Health service of the Department of Labour is to consider supplementing OSH guidelines for the sex industry with smaller, user-friendly pamphlets	YES
6	59	2	The Government should provide additional funding to the Ministry of Health to enable Medical Officers of Health to carry out regular inspections of brothels	NO
7	59	3	Police and the sex industry should look to the approach taken in Christchurch as a mutually beneficial way of managing their relationship	NO, not widespread
Chapter 5		Avoiding or Exiting the Sex Industry (Chapter 5)		
8	83	1	The Government should make adequate funding available for the establishment/ continuation of NGOs which can provide a range of services to the sex industry, including assistance with exiting for those who wish to exit	NO

9	83	2	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'	NO
10	83	3	Support for those who wish to leave the industry should be based on best-practice principles, tailored to meet the needs of the individual worker	NO
11	83	4	Sex workers who do not wish to leave the industry should 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	YES, by the NZPC
Chapter 6		The Brothel Operator Certification System (Chapter 6)		
12	97	1	The current certification system should be maintained, but the PRA amended to extend the period of certification validity to three years	NO
13	97	2	The PRA should 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	NO
14	97	3	Comprehensive information on brothel operators' rights and responsibilities should be provided to applicants at the time they receive a certificate	NO
15	97	4	Applicants must agree to facilitate inspections in order to obtain a certificate	NO
Chapter 7		The Use of Under-age People in Prostitution (Chapter 7)		
16	115	1	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	YES, but limited.
17	115	2	The Ministry for Youth Development and the Ministry of Social Development should deliver increased funding to NGOs working with at-risk youth	NO
18	115	3	Section 48 of the Children, Young persons and Their Families Act 1989 should be amended to include young people aged 17	YES
19	115	4	When approached by, or on behalf of, young persons at risk, the Ministry of Social Development should ensure that they are adequately supported to prevent them being used in prostitution in order to survive	NO, not to the extent required

Chapter 8		Street-Based Sex Workers (Chapter 8)		
20	133	1	Legislative approaches which aim to criminalise street-based sex workers should be avoided	YES
21	133	2	Street-based sex workers should be supported to work safely and with consideration for local communities	YES
22	133	3	Street-based sex workers should be encouraged to find alternatives to street-based sex work. NGOs should be adequately funded to facilitate this	YES, but only the NZPC is funded
23	133	4	Local government should adopt practical solutions to manage areas used by street-based sex workers and their clients	YES, but to a limited extent
Chapter 9		Response of Territorial Authorities to the PRA (Chapter 9)		
24	149	1	Local Government New Zealand (LGNZ) should consider updating the Prostitution Reform Act Guide, issued in 2003	NO
Chapter 10		Employment Conditions (Chapter 10)		
25	160	1	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	YES, but very limited
26	160	2	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	YES
27	160	3	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	The right to say NO is well publicised by the Ministry of Health & the NZPC
28	160	4	Information provided to brothel operators during the certification process about their employment responsibilities should include providing information to sex workers about their employment rights	NO

16.2 Appendix 2. Overview of sources

Sources

The three main documents reviewed for this report were:

1. The New Zealand Government (May 2008) Ministry of Justice: 'Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003', Ministry of Justice. Also known and referred to in this document as 'The PLRC 2008'
2. Abel, G., Fitzgerald, L., and Brunton, C. (2007) 'The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers: Report to the Prostitution Law Review Committee', Christchurch School of Medicine: Department of Public Health and General Practice, University of Otago, Christchurch.
Also known and referred to in this document as 'CSOM 2007'.
3. Mossman, S.E., and Mayhew, P. (2007) 'Key Informant Interviews: Review Of The Prostitution Reform Act 2003', Ministry of Justice. Also referred to in this document as Mossman & Mayhew, MOJNZ 'Key Informant Interviews' (2007).

Key sources of evidence were:

1. The NZPC's six-monthly reports supplied to the Ministry of Health.
2. Official Information Act requests.
3. Hansard (transcripts of Parliamentary debates).
4. Academic literature worldwide.
5. Government and NGO reports worldwide.

16.3 Appendix 3. The NZPC's six-monthly reports

This is the table supplied with the first OIA requesting the NZPC's six-month reports. It shows the discrepancies in the dates of the reports, meaning a document numbering system was required.

NZPC Six-Month Reports			
Document #	Reporting Period		Date on Report
1	2013 - 14	July - Dec 2013	Jan - June 13
2	2012 - 13	July - Dec 2012	Jan - June 12
3		Jan - June 13	
4	2011 - 12	July - Dec 2011	June - Dec 11
5		Jan - June 2012	
6	2010 - 11	July - Dec 2010	
7		Jan - June 2011	
8	2009 - 10	July - Dec 2009	
9		Jan - June 2010	
10	2008 - 09	July - Dec 2008	
11		Jan - June 2009	
12	2007 - 08	July - Dec 2007	June - Dec 07
13		Jan - June 2008	
14	2006 - 07	July- Dec 2006	
15		Jan - June 2007	
16	2005 - 06	July - Dec 2005	
17		Jan - June 2006	
18	2004-05	July - Dec 2004	
19		Jan - June 2005	
20	2003 - 04	July - Dec 2003 (A)	
21		July - Dec 2003 (B)	
22		Jan - June 2004	

Since 1987, the NZPC has held a contract with the Ministry of Health regarding the healthcare and wellbeing of those involved in prostitution. With the introduction of the PRA 2003, the contract was extended. The main objective was 'to contribute to the development of policies and social environments that support improved sexual and reproductive health status, particularly for people working in the sex industry and other at-risk population groups.'³⁴⁵

As part of the contract, the NZPC supplies a six-monthly report to the Ministry of Health, demonstrating how they have fulfilled the contract during the period of the report, justifying payment for the work carried out.³⁴⁶

Much of the information used in this review is taken from an analysis of these NZPC reports. Copies of these official reports were obtained from the Ministry of Health by OIA (Official Information Act) requests, covering the period from the introduction of the PRA in 2003 until July 2019.

Prior to September 2013, these reports contained some pertinent data regarding the activities carried out by the NZPC as per their contract. However, during 2013 a select committee was set up by the Justice and Electoral Committee to respond to a petition from Freedom from Sexual Exploitation (FFSE) regarding the failure of the PRA law. The subsequent submission by FFSE was critical of the PRA - and the NZPC responded with its own submission in January 2014. This coincided with the NZPC's six-monthly report for June to Dec 2014 to the Ministry of Health. This report was pruned of virtually all factual information, including details of their budget expenses. All subsequent reports have also been denuded of meaningful information.

The change was so drastic, it seemed the only way the Ministry of Health could justify its annual \$1.1 million payment to the NZPC would be if the NZPC were supplying supplementary reports to justify its work.³⁴⁷ In view of this, an OIA request was made to the Ministry of Health's Sector Operations Dunedin, which is responsible for tracking contract commitments and monitoring performance and expenditure against those commitments.

An extract from their official reply outlined the request for information:³⁴⁸

'On the 14 of May you requested the following information about New Zealand Prostitutes Collective (NZPC) contracts held by the Dunedin-based Ministry of Health Sector facility, notably:

1. The titles and dates of reports, or document subject content/headings that Sector Operations received from the NZPC.
2. The titles or subject headings (including dates) of documents containing comments on NZPC documents received in item 1 above, or emergent issues raised from such information by Sector Operations, with the NZPC.'

345 New Zealand Prostitutes Collective (NZPC) Agreement with the Ministry of Health No: 337824/00, Schedule A 'Component of Service

346 Schedule A of the Contract, Output 1

347 The budget contained only four lines: Salary Related Costs, Direct Costs, Indirect Costs, and Workforce Development

348 Refer to Appendix 2 OIA Summary List; item 13

Item 1 was provided as requested, but the official response to item 2 (see the table below) confirmed that the contract had not been monitored. No one was checking whether the NZPC was fulfilling its obligations.

The report format used previously was changed from July–Dec 2017. In section 6 it stated that ‘outcome evaluation will capture meaningful data on the success of the programme.’³⁴⁹

While the Programme Logic for the NZPC was not mentioned by name it was referred to obliquely: ‘the identification of desired outcomes has been completed during a prior period and was attached to that report.’

However, most of the data was - and continues to be - superficial: it relates to how well the NZPC performed as a health service provider. For example, have women working in prostitution increased their knowledge and practice of safe sex as a result of contact with NZPC? While the data is a little more satisfactory than was provided under the previous format, in that it monitors one part of the collective’s contracted performance, it does nothing to monitor the nature, level and trends of prostitution in New Zealand as prescribed by the ‘Programme Logic for the NZPC’. Critically, solid data around the important areas of violence and coercion continues to be non-existent in the six-monthly reports.

349 NZPC report Jan-June 2017, item 6.1

16.4 Appendix 4. Official information act requests

In order to clearly identify if the Prostitution Law Review Committee's recommendations in 2008 had either been wholly or partially implemented, a number of Official Information Requests were made to Government departments and ministers. A summary of the requests and official answers is provided in the chart below.

Summary of OIA Requests & Responses

Topic	Date of Reply	Question, Response, Implications	Request Made To
NZPC's six-monthly reports to the Ministry of Health	June 2014 to 2019	Request: for the NZPC's six-monthly reports to the Ministry of Health. After an initial request in 2014, further requests were made to obtain the reports up to 2019. Reports were supplied shortly after each request.	Ministry of Health
Number of sex workers	Dec. 2017	Request: for the numbers of brothel-based, SOOB-based and street workers in the main cities, per year from 2003 to 2017. Request refused, as the information was not held by the ministry and it had no grounds to believe it was held by another department, ministry of the Crown, organisation or authority. This was a failure to provide evidence-based data to support the Government's stance not to review the PRA 2003.	Minister of Justice
Immigration visits to check on illegal and trafficked sex workers	Dec. 2017	Request: provide the number of visits made to premises to check for illegal migrants and trafficking, for the years 2003 to 2017. Provide details of how many such visits found evidence, and what actions were taken against the management and staff. While immigration officials make such visits, the request was refused as the information was too difficult to research and collate. The policy and law page on the Ministry of Immigration website states that checks and actions are taken, but fitting records are not kept to justify their activities.	Minister of Business Innovation and Employment (MBIE)
Brothel inspections	April 2018	Request: for the years 2003 to 2017, provide details of funding allocated specifically to Medical Officers of Health to carry out regular inspections of brothels. Also provide details on how many brothel inspections have been carried out, along with the findings. No funding has been provided. The Ministry of Health has no records of carrying out inspections. Medical Officers of Health are employed by the District Health Boards. They do not routinely report to the Ministry of Health. "No funding has been provided by the Ministry of Health specifically to enable Medical Officers of Health to carry out regular inspections of brothels."	Minister of Health

Number of brothel inspections carried out by Medical Officers	Jan. 2015	<p>Request: how many brothel inspections had been carried out by Medical Officers of Health, as specified in the PRA 2003, between 2003 and 2014.</p> <p>Replies from each DHB varied. The Christchurch DHB denied even having any brothels.</p> <p>The New Zealand Ombudsman eventually obtained answers for every DHB. A total of 11 brothel inspections had been inspected in 10 years.</p> <p>Brothel inspections as specified in the PRA 2003 have never been implemented.</p> <p>No funding is provided by the Ministry to fund brothel inspections as outlined in the PRA 2003.</p>	Medical Officers of Health, Dept. of Labour, later transferred to DHBs via the Ombudsman
ACC injury claims of workers in sex industry	Jan. 2018	<p>Request: ACC claims of sex-industry workers for work-related accidents or injuries, from 2003 to 2017.</p> <p>Tables of levy-payers by year supplied for the years post-2008. Request declined for the years prior to 2008 as the information did not exist.</p> <p>Minimal cases reported (maximum 11 per year). According to the CSOM 2007 report p.15, however, 18% of sex industry workers had experienced work-related injury; 18% of 2332 is 419 workers.</p>	Accident Compensation Corporation (ACC)
Funding for exiting between 2003 and 2017	Jan. 2018	<p>Request: provide details of funding made to NGOs for the establishment/continuation of services to the sex industry, including assistance with exiting.</p> <p>Ministry of Social Development contacted Ministries of Health, Justice, MBIE, as well as WorkSafe. None had any information, hence the OIA request was refused.</p> <p>No funding has ever been allocated to supporting people to exit the sex industry, despite it being a key part of the rationale behind the 2003 law reform, and in spite of the recommendation by the PLRC in 2008.</p>	Ministry of Social Development
Funding for children abused in prostitution	Jan. 2018	<p>Request: provide details of funding to NGOs working with at-risk youth.</p> <p>The request was refused, as this group is not specified as a target group.</p> <p>It is apparent that in spite of clients and procurers being liable for 14 years imprisonment, children in prostitution are not considered vulnerable enough for funding.</p> <p>The recommendation to fund support of at-risk youth made in the PLRC 2008 has been ignored.</p>	<p>Minister for Children</p> <p>Reply from Oranga Tamariki, Ministry for Vulnerable Children</p>

Ability of workers to refuse clients	July 2018	<p>Request: The PLRC 2008 recommended IRD and the Dept. of Labour work together to clarify misconceptions regarding the right to say 'no' regardless of a sex worker's employment status; what work and evidence is available to show that this has been completed?</p> <p>Request: For the years 2003 -2017, how many complaints have been received under OSH regulations regarding the right to say NO, e.g. complaints of brothel managers pressurising workers to accept clients they wish to refuse, imposing fines or unreasonable work requirements, or encouraging the use of unsafe sex? What has been the outcome from each complaint?</p> <p>Prior to 2009, the information was unable to be supplied. Between 2009 and 2017, two investigations were undertaken regarding workers forced to accept clients, five for failure to adopt safe sex practices, and two against operators failing to adopt/promote safe sex. No details were supplied.</p> <p>These OIA responses conflict with the NZPC's six-monthly reports, in which there were frequent mentions of the pressure put on sex workers to accept clients and to have unsafe sex. The failure by the Ministry of Health to follow up on these complaints has been a flagrant breach of the PRA 2003 law.</p>	<p>Ministry of Workplace Relations & Safety</p> <p>Reply from MBIE</p>																					
Offences for commercial sex with under-age youth	Dec. 2017	<p>Request: provide details of the following offences</p> <p>Assisting an under 18-year-old to provided commercial sexual services</p> <p>Receiving earnings from a person under 18</p> <p>Contracting for commercial sexual services with an under 18-year-old.</p> <p>Two tables were supplied: one for charges and the second for convictions, for each year. They demonstrated how few charges and convictions had been made particularly in the later years.</p> <p>Charges and convictions for under-age prostitution:</p> <table><tr><td></td><td>2011/12</td><td>2012/13</td><td>2013/14</td><td>2014/15</td><td>2015/16</td><td>2016/17</td></tr><tr><td>Charges</td><td>17</td><td>46</td><td>28</td><td>15</td><td>7</td><td>4</td></tr><tr><td>Convictions</td><td>3</td><td>35</td><td>9</td><td>7</td><td>6</td><td>2</td></tr></table>		2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	Charges	17	46	28	15	7	4	Convictions	3	35	9	7	6	2	Ministry of Justice
	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17																		
Charges	17	46	28	15	7	4																		
Convictions	3	35	9	7	6	2																		
PRA 2003 Criminal sex offences between 2003 and 2018	Nov 2018	<p>Request for police proceedings regarding prostitution offences under the PRA 2003 under three categories for 2003 to 2017:</p> <ol style="list-style-type: none">To induce/compel to provide sexual services In 2012 there were two charges. No other charges under this category of coercion have ever been made. On the basis of this, no coercion could be considered to exist in the sex industry. This is patently false when compared to the NZPC's frequent reports of coercion.Sex worker or client fails to adopt safer sex practices There have been only eight charges in this category.Operator fails to adopt/promote safe sex There have been only two charges in this category. <p>The number of incidents provided in the NZPC's reports for all three categories over this period demonstrates that the PRA is not working in these important areas.</p>	Ministry of Justice																					

Cost of the PLRC report in 2008	June 2018	<p>Request: for the cost of producing the PLRC report in 2008, including a breakdown by section of all specific research.</p> <p>Response: the total cost covered a number of years and was too difficult to calculate. However, the cost of research reports commissioned by the committee was provided: a total of \$777,006. This included \$665,606 for the research interviews etc carried out by the NZPC for the CSOM 2007.³⁵⁰</p>	Ministry of Justice
Responses by the Ministry of Health to the information supplied in the NZPC's six-monthly reports	June 2018	<p>Request: What, if any, actions have been taken as the result of the information supplied in the NZPC's six-monthly reports? What additional information has been requested by the Ministry of Health as a result of the information the NZPC has either provided, or neglected to provide, in its reports? Details requested also about any performance monitoring of the NZPC's Government contract.</p> <p>No queries were raised nor actions undertaken as a result of the reports which the MOH acknowledged it received from the NZPC. No action was taken to monitor the contract between the NZPC and the Ministry of Health. The reports were simply forwarded to portfolio managers.</p> <p>The Ministry of Health's Sector Operations failed to monitor the performance of the NZPC to ensure they met the requirements set out in the contract. This is a specific responsibility of Sector Operations.</p> <p>The failure of the NZPC to meet its contractual requirements, specifically those agreed upon in the Programme Logic, means the opportunity to identify and monitor vital trends in the sex industry has been missed since 2011. Additionally, the Ministry of Health failed to follow up on prosecutable offences notified to them by the reports, and failed to comply with the requirements set out in the PRA 2003 to ensure brothel inspections were carried out by Medical Officers of Health.</p>	Sector Operations, Ministry of Health
A review of the PRA in 2018	Dec. 2018	<p>Request: whether there would be a review of the Prostitution Reform Act 2003 in 2018, as recommended by the law reform review committee in 2008.</p> <p>Response: 'No plans to review the operation of the PRA at this time.'</p> <p>The recommendation of the PLRC has been ignored.</p>	Ministry of Justice
Preparation work for a review of the PRA in 2018	Mar. 2020	<p>Request: for information on plans to review the PRA 2003, as recommended by PLRC in 2008.</p> <p>Response: no plans to review the PRA. Internal documents which fall within the scope of the request do not exist.</p> <p>There has never been any intention of reviewing the PRA in 2018 as recommended by the PLRC in 2008.</p>	Hon. Andrew Little, Minister of Justice

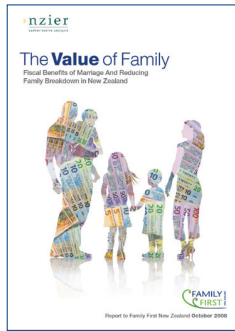
³⁵⁰ Gillian Abel, Lisa Fitzgerald and Cheryl Brunton (2007), University of Otago.

16.5 Appendix 5. Source of graph data for percentage of prostitutes in various countries.

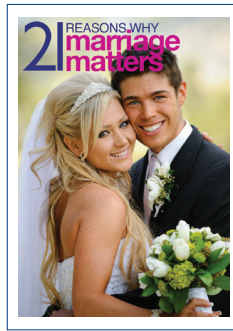
Item	Data Title	Source	Study	Comment
1	NZ	Ministry of Justice * 2.1	Saphira and Herbert (2004)	47 workers
2	Victoria Canada	Ibid. 2.2	Benoit and Millar, 2001	Of 201 workers 70% had exited at least once
3	Victoria Australia	Ibid 2.1	Crime Misconduct Commission	64 Workers. One third intended to stay.
4	Victoria Street Workers	Ibid 2.1	Woodward et al. (2004)	50% said they would stay
5	Victoria Brothel or Sole Workers	Ibid 2.1	Woodward et al. (2004)	40% said they wanted to stay
6	UK Streetworkers	Ibid 2.2	Hester and Westmarland 2004	
7	Victoria	Sullivan. 'What Happens When Prostitution becomes Work?' CATWA. Footnote p8.	Noske and Deacon 1996, p9-10.	Survey by Prostitutes Collective of Victoria. 62.4% wanted to leave.
8	Netherlands legalised Prostitution	ibid	Bindel & Kelly 2004 p1417	Prostitution is legal. 75% wanted to leave.

* Mayhew and Mossman, 'Exiting Prostitution: Models of Best Practice', October 2007. Prepared for the Ministry of Justice.

RESEARCH PUBLISHED BY FAMILY FIRST NZ:



Family Breakdown: 2008



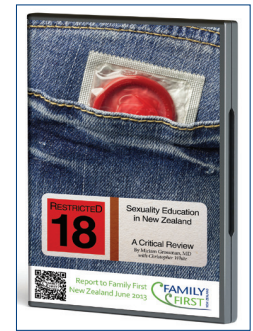
Marriage: 2009



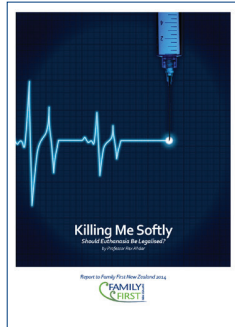
Drinking Age: 2011



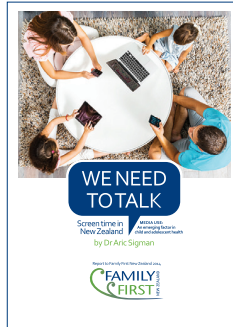
Daycare: 2012



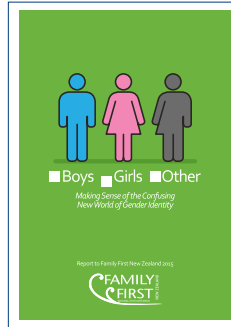
Sex Education: 2013



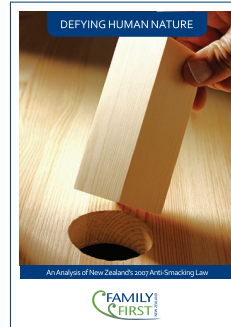
Euthanasia: 2014



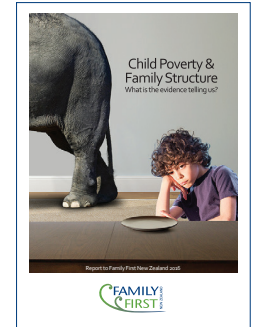
Screentime: 2015



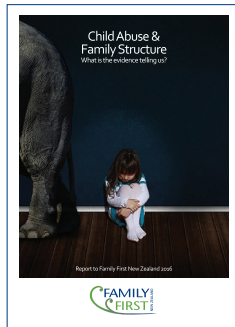
Gender Identity: 2015



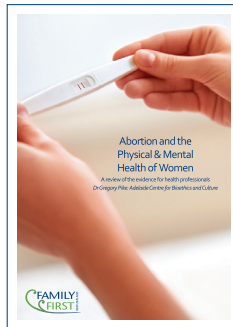
Anti-Smacking Law: 2016



Child Poverty: 2016



Child Abuse: 2016



Abortion & Health: 2018



Why Mothers Matter: 2018



Imprisonment: 2018



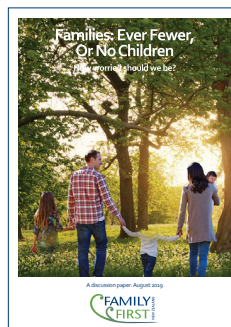
Dinner & Family Life: 2018



Why Fathers Matter: 2018



Children Transitioning: 2018



Fertility: 2019



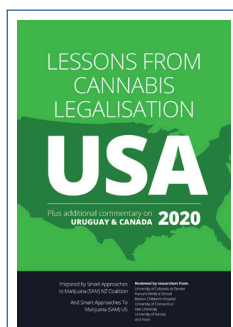
Parent Guide – Gender: 2019



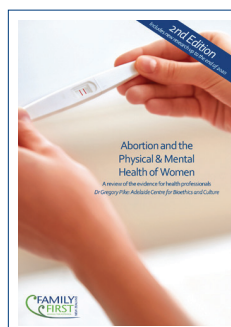
Anti-Smacking Law: 2020



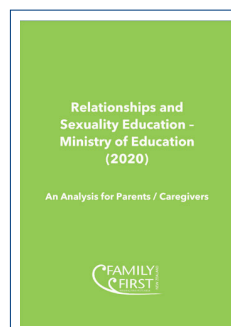
Stepfamilies: 2020



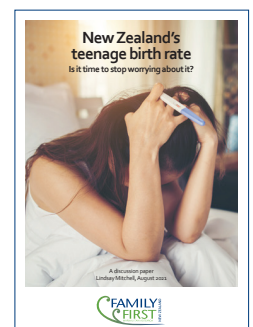
Cannabis Legalisation: 2020
(in conjunction with SAM-NZ)



Abortion & Health: 2021



Sexuality Education: 2021



Teenage Birth Rate: 2021

Available on our website: FamilyFirst.nz