



People Trafficking: An International Crisis Fought at the Local Level

Prepared by

Susan Coppedge

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PO Box 3465, Wellington, New Zealand

Telephone +64 4 472 2065, Facsimile +64 4 499 5364, Email info@fulbright.org.nz, www.fulbright.org.nz

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Susan Coppedge
Wellington, July 2006

EXECUTIVE SUMMARY

People trafficking is an international problem with myriad dimensions that requires responses at the international level, the national level and the local law enforcement and community level. Internationally, the global community is united against preventing this form of modern day slavery via humanitarian and legal responses. International aid from economically advantaged countries to economically disadvantaged ones will reduce the supply of people and children who are forced by economic necessity into sexual and labour exploitation. International protocols have been enacted to guide nations on what laws can be implemented to best target criminal activity. Many countries, including the United States and New Zealand, have enacted a range of laws to prosecute all the various forms of people trafficking. The next step is to train and equip law enforcement to recognise and investigate these crimes so they can be successfully prosecuted. Countries should also support non-governmental organisations (NGOs) which can address the societal issues that cause some people to be more vulnerable to trafficking. Support can come from government programmes designed to get aid to those at risk of under-age prostitution to keep them from engaging in what has been called “survival sex.”

This report briefly outlines the state of the law internationally, in the United States and in New Zealand. Defining legal terms allows a dialogue and comparison of the laws used to combat trafficking in New Zealand and the United States. There are two broad categories of trafficking cases to be examined. First, people trafficking can involve commercial sexual exploitation: both instances of individuals who are under the age of 18 and engaging in commercial sexual services and individuals of any age who are forced, compelled or coerced into prostitution. Second, people trafficking can be labour exploitation which will typically involve migrants who may have been deceived regarding the type of work they would be doing in New Zealand, or may be in debt bondage to their traffickers.

In the Prostitution Reform Act (PRA), New Zealand decriminalised prostitution but criminalised assisting anyone under the age of 18 in providing commercial sexual services, receiving earnings from that person’s provision of commercial sexual services, or contracting with anyone under the age of 18 for commercial sex. The PRA also criminalised inducing or compelling anyone to provide commercial sexual services. While not identified as trafficking under New Zealand law, an analysis of the cases that have been prosecuted under the Prostitution Reform Act will demonstrate how this law addresses the same concerns as the trafficking law in the United States. Cases brought under the PRA will be discussed as internal trafficking for the purposes of this report. New Zealand has prosecuted two people smuggling cases, the review of which can be helpful in determining how to investigate and prosecute trafficking cases, which have similar fact patterns and legal challenges.

Non-governmental and advocacy organisations raise awareness of problems for those who often do not have a voice: the underage, the impoverished, and migrant workers. NGOs can lobby government for more services both to prosecute cases and to assist the victims who are at risk of economic and sexual exploitation. There are numerous NGOs in New Zealand who can make recommendations on how to best get services and help to victims. The work being done by a sample of NGOs sets the stage for

discussion about how best to protect the victims of trafficking and sexual exploitation.

Future challenges in combating sexual exploitation of those under 18 are gang involvement in the sex industry, Police's reduced ability to enter and search brothels, and securing additional resources which are needed for investigations and enforcement of the law against those offenders who seek out youth under 18 years in age for commercial sex. These areas will be briefly examined with the goal of making recommendations to the Prostitution Law Review Committee as to what changes might improve the Prostitution Reform Act. The Government can also provide more services to keep youth from entering into commercial sex in the first place.

The report ends with an examination of three factual scenarios that would be people trafficking under current New Zealand law. These case studies could not be prosecuted as trafficking crimes, because, at the time they occurred the trafficking law was not in place. To date there have been no criminal prosecutions under the trafficking law. However, the three case studies demonstrate that there are trafficking crimes committed in New Zealand, and begin the process of raising awareness of the fact patterns typical in people trafficking cases.

Overall New Zealand is dedicated to fighting people trafficking and under-age prostitution. It has the laws in place which are called for by the United Nations and various international protocols. Law enforcement is prosecuting those cases in which there are complainants. However, more resources need to be directed to investigating those cases where the victims do not complain or seek out law enforcement. While numerically New Zealand has a much smaller problem with trafficking than some other economically advantaged countries, it can do more to improve the identification of people trafficking in the migrant community and prosecute those who hold migrants due to force, fraud, coercion or debt bondage. Trafficking investigations should be made a priority for the New Zealand Police and Immigration New Zealand. The first step is training for all police and immigration officers in recognising the indicators of people trafficking and working with victims. The crime of people trafficking often occurs on the edges of society and targets the most vulnerable; people who need the Government's protection. The effort that a country puts into protecting those that do not have a voice, the marginalised youth or migrant worker, reflects a great deal about how that country values the rights of all individuals. Therefore, trafficking crimes need to be pursued vigorously and with more resources.

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PREFACE

Human or people trafficking is an international problem focusing on the exploitation of the world's most vulnerable, primarily women and children. The United States government estimates that there are 800,000 people trafficked each year, with approximately 50,000 trafficked into the United States. I am a federal prosecutor in the United States and have investigated, indicted and tried human trafficking cases in the Northern District of Georgia. Why then leave a place that clearly has trafficking problems of its own, to come to New Zealand which does not have an international reputation as a source, transit or destination country for trafficking victims? The opportunity to study another country, its law and policies and how it tackles the same international and human rights problem has been instructive and invaluable.

There are many laws both in the United States and New Zealand which can be used to prosecute the crime known as human trafficking. By studying the different legal toolboxes in each country, prosecutors in both countries can learn to be innovative in the charges and cases they bring. Differences do exist in the way our two countries address the crime of human trafficking but the goal is the same: protect the human rights of people to be free from modern day slavery and exploitation. Differences can be seen in the terminology we use, human trafficking in the United States is people trafficking in New Zealand.¹ There is also the bigger definitional issue of what qualifies as people trafficking and does it require international border crossing. Further, I was interested to see the results of the decriminalisation of prostitution, certainly a different legal context than in the majority of the United States, especially in terms of its impact on under-age youth engaged in commercial sex.

I took leave from the U.S. Attorney's Office in Atlanta, Georgia to come to New Zealand for the wonderful opportunities afforded by the Ian Axford (New Zealand) Fellowship in Public Policy. I have worked during this time in the Ministry of Justice in Wellington with its dedicated public employees. However, the views in this report are mine and mine alone, not those of the New Zealand Ministry of Justice or its counterpart, my home employer, the U.S. Department of Justice.

While commercial sex can be undertaken by either gender, the majority of people engaged in commercial sex are female. Throughout the report I have tried to use gender neutral language, except when referring to specific cases or examples. Further, if the person I am citing did not use gender neutral language, neither did I. I have also attempted to use New Zealand's terminology for referring to legal and criminal matters, rather than American idiom. Lastly, I wanted to use language which captured the concept that those under 18 years of age cannot make the choice to enter into commercial sex work. When used throughout the report, both youth and underage refer to those individuals under 18 years of age.

There are areas of research I was not able to pursue in writing this report. I did not find any migrant worker communities to whom I could speak to about the jobs they were performing in New Zealand. For obvious reasons these communities are self-

¹ Throughout the report I will refer to both people trafficking and human trafficking, the terms are synonymous. The terminology used will depend on which country I am discussing.

contained and do not want to be observed. I did spend time in Christchurch and Auckland with outreach teams who provided a point of contact and safe sex information to street workers and at-risk youth in the commercial sex industry, so that I could see the environment in which street workers operate in New Zealand. I also spent time on the streets at night in Wellington, but not with any particular organisation.

The media is vital to raising consciousness on the issue of trafficking and spreading the message of deterrence when cases are prosecuted. I simply did not have time to study the influence the media has on governments and the public when it becomes the voice of victims of trafficking.

I did have the opportunity to meet with and interview a variety of individuals while in New Zealand. At each interview I informed the individual that I was in New Zealand on an Ian Axford Fellowship in Public Policy and was looking at human trafficking issues. I appreciate everyone's candor and willingness to speak with me. I took notes during these interviews, however the interviews were not recorded. I did send copies of this report in draft form to everyone I interviewed, and am grateful for all the comments and edits I did receive. However, I did not adopt all edits. Though I spoke to many people, this final report is my work with any errors or omissions it may have. Very few people I spoke with in New Zealand would consider the engagement of youth under 18 in commercial sex to be people trafficking. This definition is one I use in the U.S. legal system, and one I believe is useful in raising the awareness of and combating commercial sexual exploitation.

Over the course of five months I met with numerous dedicated police officers and immigration officers who were willing to speak with me about their cases, their workloads, and the issues behind enforcing the current laws. Of course there are many other law enforcement officers handling cases involving child sexual exploitation that I did not have the opportunity to meet. I greatly admire New Zealand law enforcement and their dedication to the job and to protecting victims of crime. I appreciate the time they were able to carve out of their busy days to speak with me. Unfortunately, with a five-month period for the research and writing of this report, I was unable to speak to individuals at the Ministry of Social Development or at Child Youth and Family Services who, I am certain, could have added to my understanding of services available from the Government. I was able to meet with numerous individuals and volunteers who work at service organisations and non-governmental organisations to help those who are under 18 years of age and either at-risk or engaged in commercial sex in New Zealand. Again, the people I met with do not comprise an exhaustive list of all service work being done in this field. I regret I was not able to meet with more organisations and Government agencies. The dedicated public sector employees and the volunteers and employees of NGOs that I did meet are all striving to make New Zealand a better place to live and work for all people. They were all truly impressive.

1. INTRODUCTION

People trafficking is one of those rare policy and legal arenas where every nation purports to be against this form of modern day slavery and wants to protect its citizens. The Universal Declaration on Human Rights states that: “No one shall be held in slavery or servitude: slavery and the slave trade shall be prohibited in all their forms.”² Slavery today can include, among other things, the sale of children, child prostitution, child pornography, the exploitation of child labour, use of children in armed conflicts, debt bondage, trafficking in persons, and the exploitation of prostitution. Those caught up in the various forms of slavery are typically from the poorest and most vulnerable social groups and have no “voice” due to fear and oppression. This report will analyse how New Zealand is attempting to prevent and combat trafficking in persons with a focus on under-age prostitution and forced labour of any age group. There has been great effort on the part of many nations and non-profit organisations made across international borders to protect the rights and integrity of individuals. However, people are still moved against their will and taken where there is “demand” for their services. The demand for these services explains why people trafficking occurs, even though there are laws and governments have lined up against it.

Does New Zealand have a people trafficking problem? Before answering this question there must be a consensus on what constitutes people trafficking. In the United States human trafficking is both 1) sex trafficking and 2) “the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services through the use of force, fraud or coercion” for the purpose of subject that person to involuntary servitude, peonage, debt bondage or slavery.³ Thus, the United States views under-age prostitution as a form of trafficking, in that those under 18 cannot choose to engage in commercial sex and, thus, are forced, defrauded or coerced into it. New Zealand law does not define under-age prostitution as trafficking, but instead focuses on entry of a person into New Zealand by one or more acts of coercion against the person, or acts of deception of the person. This report will examine these different definitions in detail and will consider the benefits of including under-age prostitution in the definition of people trafficking. “Internal trafficking” will be the terminology used to refer both to those under 18 who are engaged in commercial sexual activity and those who are induced or compelled to provide commercial sexual services.

How does people trafficking occur in a country that is isolated and without a land border to “traffick” individuals across? New Zealand, a country of approximately 4.1 million people, clearly does not have the same number of trafficking victims as the United States or other countries in Western Europe which are trafficking destinations and which contend with land borders across which “coyotes” or “mules” bring people. A geographically isolated country, New Zealand has an extremely rough stretch of sea (approximately 2000 kilometers of the Tasman sea), separating it from its nearest neighbour Australia. However, this vast oceanic border does not make New Zealand free from the problems all economically prosperous countries have: to those

² United Nations, Office of the UN High Commissioner for Human Rights, Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights

³ 22 United States Code s 7102(8)

economically disadvantaged, work and opportunities in New Zealand seem like a preferred option to their home situations. The U.S. State Department described the extent of trafficking in New Zealand as “modest.”⁴ New Zealand could be viewed as a destination country, one whose economic prosperity makes it attractive to those less fortunate. In this respect the United States and New Zealand are similar. New Zealand’s people trafficking problem is not a numerically large one. Further, New Zealand does have laws in place to address many variations of people trafficking.

A recent UN report conducted a comparative analysis of global human trafficking patterns from 1996-2003. While noting that empirical data on human trafficking is elusive and unreliable, the report listed New Zealand as a destination country for trafficking victims and classified New Zealand as medium in the citation index in terms of all destination countries for trafficking victims.⁵ “Overt street soliciting is largely confined to four or five relatively small areas in Auckland, Wellington, and Christchurch.”⁶ Unfortunately there are also under-age youth working on the streets and being hired by brothels. It is difficult to accurately quantify the number of under-age individuals engaged in commercial sex due to the hidden and transient nature of the activity. Thus, numbers used throughout the report will be anecdotal and simply a snapshot of one specific place and period of time. For example, in Christchurch over a 6 month time period from late 2005 to March 2006, the Police estimated that there were approximately six under-age girls working the street as sex workers at some time.⁷ In Wellington, Catherine Healy, the National Co-ordinator of the New Zealand Prostitutes Collective, believes that while there are people under 18 in the industry, there are not that many under 16.⁸ At this moment in time, Ms Healy was aware of only one 15-year-old transgender youth engaging in commercial sex in Wellington.⁹ The Prostitution Law Review Committee, created under the Prostitution Reform Act (PRA) to review the operation of the act and the sex industry in New Zealand, estimated that prior to the passage of the PRA “there were around 200 sex workers under the age of 18 and over half (60%) were located in the street sector.”¹⁰ The Committee went on to find that 25 percent of all underage workers were working in escort agencies and 10 percent were working privately.¹¹ Underage individuals engaged in commercial sex were found, primarily, in larger urban centers.¹²

New Zealand law in the Prostitution Reform Act addresses underage prostitution by

⁴ U.S. State Department, “Trafficking in Persons Report” (June 2006), New Zealand Country Narrative

⁵ United Nations Office on Drugs and Crime (UNODC), “Trafficking in Persons: Global Patterns” 43, 100 (April 2006). The classification scheme is further explained in the report. There were five categories into which countries could be placed: very high, high, medium, low and very low. As a bell-shaped curve was used, the majority of countries were classified as medium.

⁶ Prostitution Reform Bill, as reported from the Justice and Electoral Committee, p. 15. This report does not encompass smaller communities in New Zealand, but focuses instead on the three main cities and areas for at risk youth engaging in commercial sex. When discussing street workers in Auckland, this includes Counties Manukau as well.

⁷ Interview with Superintendent Sandra Manderson, District Commander Canterbury, New Zealand Police; Peter Read, Detective Inspector, New Zealand Police; Gary Knowles, Inspector, New Zealand Police; and Todd Hamilton, Detective, New Zealand Police (Christchurch April 2006)

⁸ Interview with Catherine Healy, New Zealand Prostitutes Collective (Wellington March 2006)

⁹ Id.

¹⁰ Prostitution Law Review Committee, *The Nature and Extent of the Sex Industry in New Zealand: An Estimation*, 12 (April 2005)

¹¹ Id. at p. 33

¹² Id.

criminalising the operators of the brothels or escort services who hire anyone under the age of 18 as well as the offenders who seek out those under 18 years of age for commercial sex.¹³ Prosecutions brought under these provisions will be reviewed in this report. However, more is needed than enforcement of the law via prosecutions of offenders. The role of government and non-governmental organisations in protecting victims and preventing at-risk youth from engaging in commercial sex will also be examined. In addition to this internal trafficking, transnational trafficking in New Zealand will be examined by looking at three case studies. These case studies arose prior to the enactment of the trafficking laws, but provide a basis for analysing trafficking cases in New Zealand and an indicator of what cases may arise in the future. Lastly, recommendations will be made as to what steps New Zealand can take to reduce prostitution of persons under 18 years, and prosecute future people trafficking cases.

¹³ Prostitution Reform Act, s 20-23

2. LEGAL DEFINITIONS OF PEOPLE TRAFFICKING

While there is a concentrated global effort to eliminate people trafficking, the nature of the crime and the tools for fighting it vary from nation to nation. Trafficking is defined differently by the New Zealand and the United States, and there are different and varied laws in each nation to address the trafficking problem. In attempting to ascertain the existence or extent of people trafficking in New Zealand, one must first review the legal definitions both in New Zealand and internationally.

A. People Trafficking and International Law

People trafficking generates an estimated \$9.5 billion annually in revenue and “is closely connected with money laundering, drug trafficking, document forgery, and human smuggling.”¹⁴ Of the estimated 800,000 people trafficked each year, “80 percent are women and girls, and up to 50 percent are minors” with the majority being “trafficked into commercial sexual exploitation.”¹⁵ The international community, as represented by the United Nations and various international human rights groups and non-governmental organisations, has reacted strongly to people trafficking as a global human rights issue. At the United Nations Convention against Transnational Organized Crime in 2000, two protocols were passed addressing trafficking in persons and the smuggling of migrants. The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol), defines trafficking in persons as follows:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁶

New Zealand ratified the Trafficking Protocol on 19 July 2002. The United States ratified the Trafficking Protocol on 3 November 2005.

The United Nations states that children under 18 cannot give valid consent to work in the sex industry and any “recruitment, transportation, transfer, harbouring, or receipt of children for the purpose of exploitation is a form of trafficking regardless of the

¹⁴ U.S. State Department, “Trafficking in Persons Report” p. 13-14 (June 2005)

¹⁵ U.S. State Department, “Trafficking in Persons Report” p. 6 (June 2006)

¹⁶ GA RES 55/25, Article 3, 15 November 2000. The Organized Crime Convention and the Trafficking Protocol entered into force on 25 December 2003. As of May 2006 there are 117 signatories to the Trafficking Protocol. See, Signatories to the UN Convention against Transnational Crime and its Protocols, www.unodc.org/unodc/en/crime_cicp_signatures

means used.”¹⁷ The United Nations definition does require that offences are “transnational in nature and involve an organized criminal group”.¹⁸

An offence is transnational in nature if:

- (a) It is committed in more than one State;
- (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) It is committed in one State but has substantial effects in another State.¹⁹

As set out in the Transnational Convention against Organized Crime an “organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offenses,” and with the goal of obtaining “directly or indirectly, a financial or other material benefit.”²⁰

Notwithstanding the requirement for a transnational dimension to the definitions of trafficking under the Convention against Transnational Organized Crime and the Protocols discussed above, the UN also recognises that “trafficking in human beings does not require the crossing of international borders.”²¹ Whether or not internal trafficking is addressed in a future protocol has yet to be determined. Clearly, a person can be threatened or forced into work or for sexual exploitation in their own country without any borders being crossed. The UN Office on Drugs and Crime notes that accounts of internal trafficking in persons receive less attention than the global, transnational problem. Many nations had already criminalised the behavior outlined above in the UN’s definition of trafficking, when it occurred within its own borders. For example, both New Zealand and the United States have crimes for people who are moved against their will by coercion, abduction, fraud and deception, such as laws against kidnapping, or exploitation and forced labour, and other laws against debt bondage and peonage, as well as laws against sexual conduct with young persons. However the labels used to describe such crimes are different, and are discussed more fully below.

Countries that have ratified the Trafficking Protocol have enacted laws to prevent those under 18 from being exploited by people traffickers. Societies that are looking out for the welfare of children, even those 16 and 17 years old, recognise that even at that age youth still need some protection from themselves. The law is paternalistic in this realm. The law acknowledges what is known from practical experience, young

¹⁷ United Nations, see www.unodc.org/unodc/en/trafficking_victim_consent.html. See also Article 3(c) of the Protocol.

¹⁸ United Nations Convention Against Transnational Organized Crime, Article 3 (2000); Trafficking Protocol, Article 4

¹⁹ United Nations Convention Against Transnational Organized Crime, Article 3

²⁰ *Id.*, Article 2(a)

²¹ United Nations Office on Drugs and Crime (UNODC), “Trafficking in Persons: Global Patterns” 120 (April 2006)

people do not always have the life experiences and knowledge to make an informed decision.

The United Nations addressed smuggling of migrants in a separate treaty, namely the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime, hereinafter the Smuggling Protocol.²² Smuggling of migrants means “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”²³ Trafficking can be seen as distinct from smuggling, in that the smuggler’s role or involvement often ends once illegal immigrants are transferred across a national border. A trafficker on the other hand continues to exert control, via one of the methods in the UN definition discussed above, and uses that control to force the individual into labour or sexual exploitation.

An example of the distinction drawn between the two crimes noted above is helpful to the discussion that follows. If a migrant pays someone to help her to illegally enter a country, this is smuggling. However she may still later become a victim of trafficking. For example, a woman may pay for help across a border or purchase a fraudulent document to get into a country believing the smuggler has arranged a job for her in a restaurant. That job may be one in which she is forced to work 12 hours shifts every day, paid below minimum wage, and not allowed to control her earnings. Another scenario is where the promised job does not exist at all and the job she is forced to perform is that of a prostitute. Both forms of exploitation are trafficking, forced labour or commercial sexual exploitation of the worker, even though the victim herself initially committed a crime in entering the country illegally.

B. U.S. Law

The key U.S. Federal law in combating human trafficking is the Victims of Trafficking and Violence Protection Act of 2000.²⁴ The stated purpose of the Act was to combat “a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”²⁵ The Act defines “severe forms of trafficking in persons” as follows:

- (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (B) the recruitment, harbouring, transportation, provision, or obtaining of a person for labor or services, through the use force, fraud, or coercion for the

²² United Nations, The Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (2000)

²³ *Id.*, at Article 3(a)

²⁴ 22 United States Code s 7101, et al. The act was reauthorized and extended in 2003 and 2005, Trafficking Victims Protection Reauthorization Acts (TVPRA).

²⁵ 22 U.S.C. s 7101(a)

purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.²⁶

U.S. Federal law uses the following terms to indicate trafficking: force, fraud, or coercion. Coercion is further defined as follows:

- (A) threats of serious harm to or physical restraint against any person;
- (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person;
- (C) the abuse or threatened abuse of the legal process.²⁷

To force, defraud, or coerce someone into commercial sex or an employment situation in which they have no choice – in which their liberty is removed, or they are denied freedom – that is trafficking. Someone can willingly enter another country for work, either by being smuggled in or entering legally under a visa, but then, even after entry if they are forced, defrauded or coerced into employment, sexual or otherwise, so that they feel compelled to remain in service or perform work, then that force, fraud or coercion is the defining element of trafficking. “The person who is trapped in compelled service after initially voluntarily migrating or taking a job willingly is still considered a trafficking victim.”²⁸ A recent example of forced labour in the United States is the case of Kil Soo Lee who was recently sentenced to 40 years incarceration. Mr Lee owned a garment factory in American Samoa and recruited more than 200 workers from China and Vietnam.²⁹ Those recruited to work for Lee paid between \$5,000 and \$8,000 U.S. dollars to gain employment at the factory. Once at the factory the workers were mistreated, denied food, worked in a fenced compound that they could not leave; they were ultimately beaten, resulting in one worker losing an eye, one suffering permanent hearing loss, and many receiving widespread cuts and bruises.³⁰ This case is an egregious one, with the workers clearly victims of defendant Lee. However, less heinous crimes can also be labour trafficking.

Prostitution without the components listed in the above definition of sex trafficking is not viewed as trafficking in the United States. Further, for a crime to be a federal trafficking case there must be an interstate nexus, also known as an impact on interstate commerce.³¹ In a case of obtaining a person for labour, including services of prostitution, that involves the above elements of force, fraud or coercion and which has an effect on interstate commerce, then the labour or prostitution is a federal trafficking crime. Further, under the U.S. definition, any commercial sex act with a person under 18 years of age which has an effect on interstate commerce is automatically deemed to be a severe form of trafficking in persons.³² Thus, the United States finds that sex trafficking can happen within its own national borders

²⁶ 22 U.S.C. s 7102(8)

²⁷ 22 U.S.C. s 7102(2)

²⁸ Trafficking in Persons Report, (June 2005) U.S. State Department

²⁹ U.S. Department of Justice, Civil Rights Division, “Garment Factory Owner Sentenced in Largest Ever Human Trafficking Case Prosecuted by the Department of Justice,” *Anti-Trafficking News Bulletin*, (August 2005), Vol. 2, Issue 2

³⁰ *Id.*

³¹ 18 U.S.C. s 1591

³² 22 U.S.C. s 7102

under two scenarios: (1) there is force, fraud or coercion that causes someone to engage in commercial sex, or (2) the person engaged in commercial sex has not reached the age of 18 years.³³ Under U.S. law a person under 18 is presumed incapable of providing meaningful consent to commercial sexual activity, and that is why the law does not require force, fraud or coercion if the individual is underage.³⁴ The United States views all forms of prostitution, including that of individuals over 18, pimping and/or maintaining brothels, as contributing to trafficking in persons.³⁵ A Presidential Directive states that prostitution should not be “regulated as a legitimate form of work for any human being.”³⁶

The U.S. law against sex trafficking of children also provides maximum sentences upon conviction which are ratcheted up if the child is under the age 14. Thus, the more heinous nature of sex trafficking of younger children, or trafficking effected by force, fraud or coercion of someone regardless of age, is punishable by a term of imprisonment for life.³⁷ However, if the elements of force, fraud or coercion are missing, and the victim is between 14 and 18, then the term of potential imprisonment is reduced to 20 years.³⁸ United States law also criminalises forced labour and trafficking with respect to peonage, slavery and involuntary servitude.³⁹

In the United States the majority of trafficking victims enter across a land border and are predominantly from Latin American countries.⁴⁰ The international implications of trafficking and the importance that nations place on preventing human trafficking are reflected in their financial commitments as well as the laws that are passed. Since the passage of the Victims of Trafficking and Violence Protection Act in 2000, the United States has dedicated at least \$295 million to address the problem of human trafficking in over 80 countries.⁴¹ In 2004 alone the U.S. government spent \$82 million on anti-trafficking assistance provided to foreign governments and non-governmental organisations.⁴²

³³ See *U.S. v. Pipkins*, 378 F.3d 1282 (11th Cir. 2004). In this case the court described the way pimps forced young girls, many under 18, into prostitution. “To the pimps, an important component of the game was domination of their females through endless promises and mentally sapping wordplay, physical violence, and financial control.” *Id.* at 1285. The Court also discussed the effect on interstate commerce stemming from the use of interstate highways to take prostitutes across state lines and the use of “instrumentalities of interstate commerce – pagers, telephones, and mobile phones – to communicate with each other while conducting business.” *Id.* at 1294-95.

³⁴ 18 U.S.C. s 1591

³⁵ National Security Presidential Directive Memorandum Regarding Combating Trafficking in Persons, (NSPD-22) (February 25, 2002)

³⁶ *Id.*

³⁷ 18 U.S.C. s 1591(b)(1)

³⁸ 18 U.S.C. s 1591(b)(2)

³⁹ 18 U.S.C. ss 1589 & 1590

⁴⁰ U.S. Department of Justice, Assessment of U.S. Government Activities to Combat the Trafficking in Persons, Fiscal Year 2003 (2204); U.S. Department of Justice, Assessment of U.S. Government Activities to Combat the Trafficking in Persons, Fiscal Year 2004 (2205)

⁴¹ Annie Sweeney, “Chicago’s Sex Slave Trade” (7 August 2005) *Chicago Sun Times*

⁴² U.S. State Department, “Trafficking in Persons Report” (June 2005)

C. New Zealand Law

1. Prostitution Reform Bill

Tim Barnett, a New Zealand Labour Party Member of Parliament from Christchurch Central, sponsored the Prostitution Reform Bill as a Member's Bill, meaning it was not proposed by any political party, but by an individual Member of Parliament. Mr Barnett began his first reading of the bill with the following:

The injustices in the present law are plain and predictable, and they are real. The last 5 years have seen 410 people convicted, countless hours of police time engaged on essentially moral and unproductive crusades, and genuine criminality hidden from view by the secrecy and mystery generated by current prostitution law. Reforming this law can be seen as cleansing the stable of a century of accumulated mess, removing the layers of Victorian hypocrisy, scraping off the abuse of sex workers sanctioned by our current prostitution laws, washing away the public health dangers generated by criminalisation of the oldest profession, and replacing the stench of stigma affecting sex workers because of the position the law puts them in.⁴³

Thus Mr Barnett identified the reasons the Prostitution Reform Bill was ultimately passed: 1) the current law was unfair as it criminalised solicitation but not payment for or engagement in commercial sex; 2) policing of prostitution, focused on the illegalities in the then-current law, was seen as moralistic and unproductive with so many other "real" crimes to which the Police should attend; and 3) the need to address public health issues and protection of sex workers, areas that could not be properly dealt with as long as prostitution was criminalised. The first reading of the Bill occurred in October of 2000, with the second reading in February 2003. The final reading occurred in June 2003, with the law passing by a one vote margin of 60 to 59.⁴⁴ The vote was a "conscience vote" and therefore was not along party lines.

With the passage of the law, the first rationale of correcting inequities in the old law was clearly accomplished as soliciting for commercial sex was no longer a crime in New Zealand. Secondly, Police were no longer required to monitor and arrest prostitutes. Those hiring underage individuals for commercial sex were, however, still subject to prosecution. Lastly, the law does require that sex workers and their clients adopt safer sex practices, including the wearing of a condom.⁴⁵ The view that decriminalisation of prostitution was a health matter and human rights matter prevailed. The issue of protecting those under 18 years of age from engaging in commercial sex was also discussed during the debates on the Bill. Sue Bradford, an MP who supported the PRA, spoke about the Bill's aim to help end the "evils" of child prostitution, while Anne Tolley, MP, also speaking in support of the Bill, argued

⁴³ Tim Barnett, MP, 588 New Zealand Parliamentary Debates 6089 (11 October 2000)

⁴⁴ 609 New Zealand Parliamentary Debates 6585, 6608. One Member of Parliament abstained from voting. If this MP had voted against the bill the vote would have been tied. On a tied vote the old laws would remain the same and the PRA would not have passed. The passage of the PRA could not have been any closer.

⁴⁵ PRA, s 9. Failure to practice safe sex can result in a fine of up to \$2,000.

that it took “a very strong stand on prohibiting the exploitation of children.”⁴⁶

2. Prostitution Reform Act

In 2003 New Zealand decriminalised prostitution by enacting the Prostitution Reform Act.⁴⁷ The Prostitution Reform Act repealed sections 147 to 149A of the Crimes Act 1961, and increased the maximum penalty for engaging in paid sexual activity with an underage person from five years to seven years.⁴⁸ New Zealand law prior to the passage of the Prostitution Reform Act (PRA), outlawed soliciting which was defined as the offering of sex for money in a public place.⁴⁹ Prior to the 2003 law change it was an offence to offer sexual services for sale in New Zealand, but it was not an offence to offer to buy such sexual services or to accept a proposal from a client wanting to buy sex. The disparate nature of the law meant a prostitute who offered sex committed a crime while a client who asked for sex did not. Prior to the PRA the law also banned the act of keeping or managing a brothel.⁵⁰ Lastly, the PRA repealed the offence of living on the earnings of a prostitute.⁵¹

Under the PRA it is a crime to induce or compel another person to provide commercial sexual services, regardless of their age.⁵² Specifically, the law states that one may not threaten or promise explicitly or implicitly, may not abuse their position of power or authority, may not accuse or disclose that the person is unlawfully in New Zealand, or may not blackmail someone by threatening to disclose offences they have committed or other misconduct that would likely damage one’s reputation.⁵³ Violating the law and coercing someone into prostitution carries a maximum penalty of 14 years imprisonment.⁵⁴ This section of the law can be used in cases of compelled commercial sex regardless of whether someone crossed a transnational border before being compelled or induced. In fact, the PRA recognises that a common scenario which could compel a person into prostitution is a person’s desire to hide the fact that they are unlawfully in New Zealand, and specifically forbids a person from threatening to disclose that unlawful immigration status as a method of inducing another person to provide commercial sexual services.⁵⁵ Thus, while not calling it a crime of trafficking, the PRA does address the situation in which someone is induced or compelled to work as a prostitute.

The PRA also criminalises contracting with a person under 18 for commercial sexual services, assisting a person under 18 in providing commercial sexual services, or receiving earnings from the commercial sexual services of a person under 18.⁵⁶ The

⁴⁶ Anne Tolley, MP, 588 New Zealand Parliamentary Debates 6425 (8 Nov. 2000); Sue Bradford, MP, 609 New Zealand Parliamentary Debates 6591 (25 June 2003)

⁴⁷ Prostitution Reform Act (PRA), 2003, s 3. The entire PRA is included as Appendix A to this report.

⁴⁸ Prostitution Reform Act, 2003, s 48 and s 23

⁴⁹ Summary Offences Act 1982, s 26

⁵⁰ Crimes Act 1961, s 147

⁵¹ Crimes Act 1961, s 148 (Crimes Act). The PRA also repealed Procuring for Prostitution, Crimes Act s 149, and being a client in the act of prostitution by a person under 18 years of age, Crimes Act s 149A. The latter crime was the only one specifically targeted to clients, and was essentially replaced by the PRA with a higher maximum sentence, PRA, s 23.

⁵² PRA, s 16

⁵³ PRA, s 16(2)

⁵⁴ PRA, s 16(3)

⁵⁵ PRA, s 16(c)

⁵⁶ PRA, s 20-22

penalty for any of the above activity is a term of imprisonment of up to seven years.⁵⁷ This penalty is half as much as the penalty for inducing or compelling someone to engage in prostitution, but in some cases the facts might support charging a defendant with both crimes. It is not a crime for the person who is under 18 to engage in commercial sexual services.⁵⁸ The Justice and Electoral Committee that considered the bill noted in its report back to Parliament that “one aim of the bill is the protection of persons under 18 from exploitation in relation to prostitution.”⁵⁹ Further, the Committee reported that “children should not be subject to criminal charges under the bill”, because “[a]lthough some children may seem to have entered the industry by choice, it is questionable how ‘free’ that choice actually is in many circumstances.”⁶⁰

The PRA also empowered Immigration New Zealand to prevent people from entering New Zealand to do sex work and bans people in New Zealand on temporary work permits from working in the sex industry.⁶¹ The penalty for this behaviour is revocation of the temporary permit.⁶² Illegal sex workers who may have been compelled into prostitution can potentially face criminal charges themselves if they violate immigration laws. However, in practice, one hopes they would not. The assessment as to whether the migrant is in fact a victim, and the discretion on whether to bring charges against them, lies with law enforcement. To date, no cases have been brought against anyone working in the sex industry while here on a temporary permit.

The actions criminalised under the PRA are not called trafficking by New Zealand law, as New Zealand’s legal definition of trafficking focuses on transnational movement of individuals across a border, as more fully discussed in the following section. The PRA does criminalise behaviour which would be viewed as trafficking under United States law. The criminal behaviour identified in the PRA would be recognised as internal trafficking by the international community and will be referred to as internal trafficking in this report.

3. Smuggling Migrants and Trafficking in People

In June 2002 New Zealand added sections to the Crimes Act pertaining to smuggling migrants (section 98C) and trafficking in people by means of coercion or deception (section 98D) to implement the Trafficking Protocol and Smuggling Protocol.⁶³ Violating either law carries a maximum penalty of 20 years and a fine of up to \$500,000.⁶⁴ Proceedings under either section cannot proceed without the consent of the Attorney-General.⁶⁵ Under New Zealand law smuggling focuses on those who arrange for unauthorised migrants to enter or be brought into New Zealand or any other state if this is done for a material benefit and with knowledge or reckless

⁵⁷ PRA, s 23(1)

⁵⁸ PRA, s 23(3)

⁵⁹ Prostitution Reform Bill, as reported from the Justice and Electoral Committee, p.19

⁶⁰ *Id.*, at p. 20

⁶¹ PRA, s 19. A person on a temporary permit may not act as an operator of a brothel or invest in a brothel.

⁶² *Id.*

⁶³ Crimes Amendment Act 2002, s 5 (2002 No. 20). See discussion at 2.A. People Trafficking and International Law.

⁶⁴ Crimes Act, s 98C(3), 98D (2)

⁶⁵ Crimes Act, s 98F

disregard to that person's status as an unauthorised migrant.⁶⁶ The law is broad enough to cover attempts and does not rely on actual entry to the state concerned.⁶⁷ Further, an individual in New Zealand who may be helping immigrants enter countries other than New Zealand can also be prosecuted under this statute.⁶⁸ Two smuggling cases have been brought under this law and will be discussed below as they provide insight into the successful prosecution of trafficking cases.

The law against trafficking in people also addresses arranging the entry of a person into New Zealand, but is distinguished from the smuggling law in that this entry must be by means of coercion or deception.⁶⁹ The law also penalises anyone who "arranges, organises, or procures the reception, concealment, or harbouring in New Zealand or any other state of a person, knowing that the person's entry into New Zealand or that state was arranged by one or more acts of coercion ... or of deception."⁷⁰ An act of coercion is defined to include the following:

- (a) abducting the person; (b) using force in respect of the person; (c) harming the person; (d) threatening the person (expressly or by implication) with the use of force in respect of, or the harming of, the person or some other person.⁷¹

Deception includes fraudulent action.⁷² Attempts are also criminalised, even if the trafficking was not successful.⁷³ Importantly, the law recognises that even if some acts on the part of the victim were voluntary, there can still be coercion and deception that make the case one of trafficking.⁷⁴ This distinction is key as many cases may start out as voluntary on the part of a victim, who may have been deceived as to the true reason they are entering a country. There have been no trafficking prosecutions to date in New Zealand.

Both the smuggling and trafficking laws under the Crimes Act rely on entering New Zealand and, thus, would not apply to a case of internal coercive or deceptive behavior causing someone under 18 to work in the sex industry. To address an internal trafficking case the Crown can prosecute under the PRA which punishes inducing or compelling someone into prostitution, both with 14 year maximum sentences.⁷⁵ This sentencing difference between internal and external trafficking, 14 years versus 20 years, means defendants who practice domestic or internal trafficking by forcing someone into providing commercial sexual services, face a lesser penalty than those who traffic migrants across the border. As discussed below, other provisions of the Crimes Act could also be used to prosecute individuals for conduct often found in cases of compelling or inducing someone to provide commercial sexual services.

⁶⁶ Crimes Act, s 98C(1-2)

⁶⁷ Crimes Act, s 98C(4-5)

⁶⁸ Crimes Act, s 98C(1-2)

⁶⁹ Crimes Act, s 98D(1)

⁷⁰ Id.

⁷¹ Crimes Act, s 98B

⁷² Id.

⁷³ Crimes Act, s 98D(3)

⁷⁴ Crimes Act, s 98D(4)

⁷⁵ PRA, s 16

4. Dealing in Slaves

Section 98 of the Crimes Act outlaws numerous forms of slavery, including debt bondage and serfdom, as well as delivering a “child to another person with intent that the child or his labour shall be exploited.”⁷⁶ Debt bondage is defined as:

the status or condition arising from a pledge by a debtor or his personal services, or of the personal services of any person under his control, as security for a debt, if the value of those services, as reasonably assessed, is not applied towards the liquidation of the debt or if the length and natures of those services are not limited or defined.⁷⁷

Thus, forced labour of those either too young to consent or those consenting due to debt can be prosecuted under the Crimes Act.

5. Abduction for Purposes of Marriage or Sexual Connection and Kidnapping

Section 208 of the Crimes Act punishes by up to 14 years the act of abduction for purposes of marriage or sexual connection with either the abductor or with any other person.⁷⁸ This crime addresses unlawfully taking or detaining a person, “without his or her consent or with his or her consent obtained by fraud or duress”.⁷⁹ Thus, this provision of the Crimes Act punishes sexual activity which occurs due to force, fraud or duress with no age limitation, and is comparable to the U.S. sex trafficking law. The key difference between the laws is that the U.S. law does not required force, fraud or duress if the victim is under 18 years of age. As discussed above, New Zealand criminalises commercial sex with those under 18 years of age in the PRA without requiring evidence of force, fraud or coercion. Further, there are two additional laws governing abductions, which hold that a young person, defined by the relevant provisions as a person under the age of 16 years, cannot consent to being taken away, detained, or received; and that taking away, detaining, receiving or enticing a young person is punishable by up to seven years imprisonment.⁸⁰ No sexual connection is required if the person is under the age of 16 years. The definition of young person is different under these laws than it is under the PRA.

The kidnapping statute criminalises the act of taking away or detaining a person, without his or her consent or with that consent obtained by fraud or duress, with intent to hold that person to service, to confine or imprison that person, or with intent to

⁷⁶ Crimes Act, s 98

⁷⁷ Crimes Act, s 98(2)

⁷⁸ Crimes Act, s 208. Section 2 further defines sexual connection as follows:

- (a) connection effected by the introduction into the genitalia or anus of one person, otherwise than for genuine medical purposes, of —
 - (i) a part of the body of another person; or
 - (ii) an object held or manipulated by another person; or
- (b) connection between the mouth or tongue of one person and a part of another person's genitalia or anus; or
- (c) the continuation of connection of a kind described in paragraph (a) or paragraph (b)

⁷⁹ Crimes Act, s 208

⁸⁰ Crimes Act, s 209A and 210

cause that person to be sent or taken out of New Zealand.⁸¹ This provision also carries a 14 year maximum term of imprisonment.⁸² In summary, some cases that may involve elements of trafficking can be prosecuted under more general criminal laws including abduction and kidnapping.

6. Dealing in People Under 18 for Sexual Exploitation, Removal of Body Parts or Engagement in Forced Labour

In June of 2005 Section 98AA became part of the Crimes Act of 1961, passed in part to implement the United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.⁸³ This new law is aimed at addressing anyone who targets those under 18 for sexual exploitation. The new law criminalises anyone who “sells, buys, transfers, barter, rents, hires, or in any other way enters into a dealing involving a person under the age of 18 years for the purpose of – (i) sexual exploitation; or . . . (iii) the engagement of the person in forced labour” or “induces a person under the age of 18 years to sell, rent, or give himself or herself for the purpose of – (i) the sexual exploitation of the person.”⁸⁴ One would expect the definition of sexual exploitation to include commercial sex. However, sexual exploitation is limited to pornography and any activity that (i) is “undertaken for a material benefit; and (ii) involves the exposure of the person’s genitalia, anus or breasts.”⁸⁵ The law also criminalises forced labour of those under 18 years of age but does not include a definition of forced labour.⁸⁶ There is a separate law targeting individuals who have commercial sex outside of New Zealand with children under the age of 16 years.⁸⁷ In addition to the new laws to combat underage sexual exploitation, New Zealand is presently putting together a National Plan of Action on Trafficking in Persons.⁸⁸

The new law against sexual exploitation provides a more severe penalty than the provisions of the PRA addressing commercial sex with those under 18. The maximum penalty under the Crimes Act is 14 years, as compared to the penalty under the PRA of seven years.⁸⁹ The Prostitution Law Review Committee will no doubt look at penalties when it reviews the operation of the PRA over the next year. The penalties in the PRA should be comparable to those in section 98AA. For now, New Zealand law punishes those who engage in child pornography more harshly than those engaged in commercial sex with a minor. This distinction in the law is not warranted based on the harms caused by these types of crime. The new provisions of the Crimes Act specifically provide for “a defence to a charge under this section if the person charged proves that he or she believed on reasonable grounds that the person under the age of 18 years concerned was of or over the age of 18 years” while the PRA does

⁸¹ Crimes Act, s 209

⁸² Id.

⁸³ G.A. Res. 54/263, Annex II (2000)

⁸⁴ Crimes Amendment Act (No.2 2005), s 98AA(1)(f). The law also criminalises the removal of body parts from a person.

⁸⁵ Crimes Act, s 98 AA(2)(d). The latter inclusion appears to address a child working in a strip club or other similar establishment.

⁸⁶ Crimes Act, s 98AA(1)(b)-(g)

⁸⁷ Crimes Act, s 144A

⁸⁸ Interview with Arron Baker, National Manager – Border Security & Compliance Operations, Department of Labour (March 2006)

⁸⁹ Crimes Amendment Act (No.2 2005), s 98AA(1) and Prostitution Reform Act, s 23(1)

not.⁹⁰ Thus, under section 98AA of the Crimes Act the “I thought she/he was over 18” defence can still be argued by defendants, however they must prove this belief was reasonable. Similar to the Prostitution Reform Act, the person under the age of 18 years cannot be charged as a party to the offence.⁹¹ As the amendment adding 98AA to the Crimes Act has just recently come into effect, no cases have been brought to date.⁹²

7. Participation in an Organised Criminal Group

New Zealand law also criminalises participation in an organised criminal group for a term not exceeding five years.⁹³ Similar to the UN definition, an organised criminal group must contain three or more persons and have as its objective obtaining material benefits by serious criminal activity.⁹⁴ Serious criminal activity is defined as any offence that is punishable by imprisonment for a term of four years or more.⁹⁵ Recognising the reality of criminal gangs, New Zealand law provides that not every member must be at the same level in hierarchy, only some of the people in the group need be involved in the planning, arrangement, or execution of the criminal activity, and membership in the group can change from time to time.⁹⁶ Thus, cases in which gangs or other organised criminal groups are involved in trafficking, smuggling, forcing or compelling prostitution, or assisting or receiving earnings from an individual under 18 engaged in commercial sex can be prosecuted under the Crimes Act section 98A.

8. International Aid and Commitments

Both New Zealand and the United States are in compliance with the Trafficking Protocol discussed above and both provide financial support to countries from which trafficking victims may originate. New Zealand gives money internationally to fight trafficking and is playing a key role in the Pacific region. New Zealand’s International Aid and Development Agency is known as NZAID. It was created in 2002 and has a focus on eliminating poverty with a regional focus on the Pacific.⁹⁷ One particular project focuses special attention on the Greater Mekong Subregion (GMS) in Southeast Asia. The GMS includes the countries of VietNam, Lao PDR, Cambodia, Thailand, Myanmar, and Yunnan province in China. NZAID also supports the United Nations Inter-Agency Project on Human Trafficking and provided \$351,000 to this multi-donor organisation in 2004/2005.⁹⁸ By providing funding to countries where victims originate, New Zealand hopes to reduce the number of trafficking victims by increasing the financial opportunities and ability to earn a living in those places where people are at risk.

Clearly New Zealand wants to fight people trafficking in its own country, in the

⁹⁰ Crimes Amendment Act (No. 2 2005), s 98AA(1A)

⁹¹ Cf. Crimes Amendment Act (No.2 2005), s 98AA(2D) and Prostitution Reform Act, s 23(3)

⁹² Section 98AA was inserted, as from 14 June 2006, by s 6 Crimes Amendment Act 2005 (2005 No 41). Crimes Amendment Act Commencement Order 2006 (SR 2006/121)

⁹³ Crimes Act, s 98A

⁹⁴ *Id.*; U.N. Convention Against Transnational Organized Crime, Article 2

⁹⁵ Crimes Act, s 98A(2)

⁹⁶ Crimes Act, s 98A(3)

⁹⁷ NZAID, www.nzaid.govt.nz/about/index.html

⁹⁸ NZAID web site, Asia Regional NZAID Annual Review 2005/2005, p. 106

Australasian region, and in Asia. It has the appropriate laws in place to prosecute trafficking cases, be they of migrants brought into New Zealand, children under 18 used in commercial sexual exploitation, or those over 18 who are induced or compelled to provide sexual services. With the laws in place, the next step is to identify trafficking victims and develop successful criminal prosecutions.

3. IS THERE PEOPLE TRAFFICKING IN NEW ZEALAND?

The U.S. Trafficking Victims Protection Act requires the State Department to make Annual Country Reports on Human Rights Practices to Congress, and bases its evaluation of trafficking in persons on the definition in 18 U.S.C. Section 7102(8).⁹⁹ To be included in the Annual Trafficking in Persons Report a country must be “a country of origin, transit, or destination for a significant number of victims of severe forms of trafficking, generally on the order of 100 or more victims.”¹⁰⁰ The State Department queries foreign governments to determine whether the Government is involved in activities to combat trafficking and asks what steps have been taken to assist any victims of trafficking in those countries. Human rights organisations and other non-governmental organisations are also consulted. The U.S. State Department then places countries with a significant number of victims into Tiers. New Zealand has always been a Tier 1 country, meaning the government fully complies with the minimum legal standards for prosecuting, protecting and preventing human trafficking.

New Zealand’s first appearance in the Trafficking in Persons Report in 2004 prompted this response from the Minister of Foreign Affairs who called New Zealand’s inclusion “regrettable”:

There is no evidence of children being trafficked in New Zealand . . . The sad problem of child prostitution here appears to be almost entirely a home grown one. . . . It appears that researchers for the State Department have taken a report by the NZ organisation ECPAT out of context, and failed to fully appreciate the extent of actions taken in New Zealand against trafficking and child exploitation.¹⁰¹

The initial inclusion of New Zealand appears to be due to the United States definition outlined above, which finds that those individuals in New Zealand who are under 18 years old and engaged in prostitution are trafficking victims. The Minister of Foreign Affairs’ response that children were not being trafficked to New Zealand for prostitution meant that children were not being brought across New Zealand’s borders by acts of coercion or deception. In 2006 Minister of Justice, Mark Burton responded to New Zealand’s inclusion as a Tier 1 country by stating that: “there was ‘no evidence’ of people-trafficking in New Zealand.”¹⁰² The Minister of Justice acknowledged that there were “differences about definitions” and that “New Zealand, like the United States, recognises that all nations must play their part in combating this pernicious practice.”¹⁰³ The media provided a good example of the difference in definitions between the two countries: “It is up for debate whether a child involved in prostitution and being moved around within the city of Christchurch constitutes a case

⁹⁹ 22 U.S.C. s 2151n; 22 U.S.C. s 7102(8)

¹⁰⁰ U.S. State Department, “Trafficking in Persons Report” p. 29 (June 2006); 22 U.S.C. s 2151n

¹⁰¹ Phil Goff, Minister of Foreign Affairs, “U.S. State Department report on trafficking”, 16 June 2004

¹⁰² Paula Oliver, “Talks with U.S. aim to smooth over ‘differences’ on people-trafficking”, *New Zealand Herald*, 6 June 2006

¹⁰³ Mark Burton, Minister of Justice, “New Zealand’s fight against trafficking in persons recognised”, 6 June 2006

of trafficking.”¹⁰⁴ The last three Trafficking in Persons Reports discussed New Zealand as a destination country for women trafficked from Thailand, the People’s Republic of China, and other countries in Asia for the purpose of sexual exploitation.¹⁰⁵ The 2006 report notes that there are also anecdotal reports of women coming to New Zealand from Brazil and the Czech Republic.¹⁰⁶ The New Zealand Prostitutes’ Collective has indicated that small numbers of Eastern Europeans and Brazilians are beginning to show up in the sex industry.¹⁰⁷

The past three reports have recognised the intra-country issue of children engaged in prostitution.¹⁰⁸ In the 2006 report the term “internal trafficking” was used to refer to the “sizable number of children engaged in prostitution.”¹⁰⁹ This terminology is useful as it allows the examination of crimes that can be viewed as trafficking, while maintaining New Zealand’s legal distinction which requires an individual to be brought across a border for the crime to be people trafficking. While there are laws to address the crime of engaging in commercial sex with those under 18, the law does not recognise this as trafficking.¹¹⁰ In this report the term internal trafficking will be used to refer to those under 18 who are viewed by the United Nations, the United States, and New Zealand as unable to make a choice to enter into the commercial sex industry, and those of any age who are compelled or induced into providing commercial sexual services. Laws in New Zealand are in place to protect children from participating in the commercial sex industry by criminalising those who seek out their services, and to protect people of all ages from being compelled to provide commercial sexual services.

It is true that there have been no cases of people trafficking prosecuted in New Zealand, that is no cases involving trafficking across an international border.¹¹¹ There have also been no cases brought under the PRA for inducing or compelling a person to provide commercial sexual services. The lack of prosecutions does not mean, however, that there is no such criminal activity in New Zealand. There have been cases brought under the PRA for assisting a person under 18 years in providing commercial sexual service, contracting for such services, and receiving earnings from such services. By examining some of the cases brought under the PRA, one can better evaluate people trafficking under the different definitions outlined above. Further, there have also been two smuggling cases brought in New Zealand which can provide insight into the types of investigations and methods that can be used by law enforcement in looking for evidence of trafficking. These cases also provide guidance

¹⁰⁴ Oliver, “Talks with U.S. aim to smooth over ‘differences’ on people trafficking”

¹⁰⁵ *Id.* See also U.S. State Department, “Trafficking in Persons Report” (June 2005); U.S. State Department, “Trafficking in Persons Report” (June 2004)

¹⁰⁶ U.S. State Department, “Trafficking in Persons Report” (June 2006), New Zealand Country Narrative

¹⁰⁷ Interview with Catherine Healy, National Co-ordinator, New Zealand Prostitutes Collective (Wellington, March 2006)

¹⁰⁸ The 2005 Trafficking in Persons Report states that: “where prostitution flourishes, so does an environment that fuels trafficking in persons” p. 8. This report will not comment on the advisability of decriminalising prostitution in New Zealand as that political debate was resolved in New Zealand with the passage of the Prostitution Reform Act, 2003.

¹⁰⁹ U.S. State Department, “Trafficking in Persons Report” (June 2006), New Zealand Country Narrative

¹¹⁰ PRA, s 20-23

¹¹¹ U.S. State Department, “Trafficking in Persons Report” (June 2006), New Zealand Country Narrative

as to the next steps the New Zealand government should take in combating all forms for trafficking.

A. Prosecutions under the Prostitution Reform Act

1. Police v Robert Scott Antolik

The first case prosecuted under New Zealand's PRA involved a recidivist offender who hired underage girls for sex, both before and after the passage of the Act.¹¹² Defendant Antolik, aged 31 years at the time of sentence, pleaded guilty to four charges of engaging in paid sexual activity with persons under 18 years of age. Antolik's victims in this case were, at the time he paid them for commercial sex, aged 13 years, 15 years, and 16 years.¹¹³ The District Court Judge characterised Antolik as "very much a sexual predator on the streets of Christchurch in respect of young girls who have been working as prostitutes."¹¹⁴ The Judge further found that a key motivation for and part of the passage of the PRA was to reflect the view of the community "that underage people should be protected in respect of involvement in prostitution."¹¹⁵ In fact the PRA, in protecting those under the age of 18 from exploitation and coercion, has as an implied premise that persons below 18 years of age cannot make an informed choice to engage in prostitution because they are too young.

The District Court Judge in *Antolik* found that defendant, and men like him who paid for sex with those under 18, "no doubt proceed in the expectation that their conduct is unlikely to be reported to the Police."¹¹⁶ The judge then reasoned that a stern sentence should be imposed as the frequency of punishment is not as likely a deterrent as the length of sentence. The Court further noted that: "By enacting the Prostitution Reform Act, and by increasing the maximum sentence for sexual activity with underage prostitutes, Parliament has given clear notice of how serious it regards offending of this nature."¹¹⁷

The Sentencing Act 2002 sets out principles of sentencing and includes a list of aggravating and mitigating factors which the courts must take into account, to the extent that they are applicable.¹¹⁸ Aggravating factors that could arise in most cases under the PRA include abuse of position of authority in relation to the victim, vulnerability on the part of the victim because of her age, and serious harm and damage resulting from the offender hiring an underage person for commercial sex. Other aggravating factors may include whether the offender is on bail, has used threats or actual violence, and/or has any previous convictions. With respect to

¹¹² *Police v Antolik*, [2004] DC 631 (Christchurch), para.6 (*Antolik*, District Court); *Robert Scott Antolik v Police* HC (Christchurch) 409-000042/04 (*Antolik*, High Court)

¹¹³ *Antolik*, High Court, paras. 3-5

¹¹⁴ *Antolik*, District Court, para. 32

¹¹⁵ *Id.*, at para. 40. The High Court agreed, holding that the PRA was "designed to prevent the exploitation of young girls and, more particularly, as an endeavour to protect them against themselves during a period of their lives when they may be particularly vulnerable." *Antolik*, High Court, para. 8.

¹¹⁶ *Antolik*, District Court, para. 50

¹¹⁷ *Id.*, at para. 52

¹¹⁸ Sentencing Act, 2002, s 8-9

defendant Antolik, there was a significant aggravating factor in the sentencing context as he was in breach of bail conditions at the time the present offences were committed. Specifically, Antolik was on bail for a charge under section 8 of the Harassment Act 1997, which related to an allegation involving a 13 year-old girl.¹¹⁹ As a result of that allegation, a condition of bail was that the defendant not be found within the Four Avenues, a known sex worker area. He was arrested in that same area from which he was banned. The Court in *Antolik* also noted that in the case of one of the victims the defendant had developed a relationship with her that restricted her freedom of movement.¹²⁰ The High Court also noted that his “ongoing endeavours to have contact with the 15 year old complainant was an aggravating feature of some concern.”¹²¹

The defendant did receive a reduction of his sentence due to an early guilty plea, and was sentenced to 3 years imprisonment.¹²² The Police tried to seize the defendant’s car, a BMW, which he had used to pick up the girls.¹²³ The Judge declined to order forfeiture of the car under section 128 of the Sentencing Act, finding the sentence imposed to be “sufficient on this occasion to mark the condemnation of the community for [the defendant’s] conduct.”¹²⁴ The Court went on to put the community on notice that the use of a car to pick up underage prostitutes might result in the car’s confiscation.¹²⁵ Given the additional deterrent effect of taking someone’s property when used to facilitate a crime, there is a strong argument to be made for making seizure of said property mandatory or at least presumptive.

On appeal the High Court reduced the defendant’s sentence to two years imprisonment, finding that a starting point of four and a half years was too high.¹²⁶ The mitigating factors that come into consideration in cases under the PRA may include the age of the offender, whether and when he pleaded guilty, conduct of the victim, any remorse shown by the offender, and evidence of the offender’s previous good character.¹²⁷ Defence counsel argued that this case was not one of coercion in that the victims were already on the street. The High Court judge commented when assessing Antolik’s sentence that the “complainants had already, of their own volition, become involved as street girls. It is therefore a case of exploitation of them in that situation, rather than a case which has the added dimension of what I have called recruitment.”¹²⁸ While the Court is required to consider the conduct of the victim, this statement by the High Court misses the point of the PRA, which set out to protect those under 18, even from themselves. If the case had involved coercion it could have been brought under section 16 of the PRA, which allows for a sentence of 14 years.¹²⁹ The judge also noted that some of the charges to which Antolik pleaded guilty were brought under the Crimes Act, s 149A, which had a maximum sentence of five

¹¹⁹ *Antolik*, District Court, at para. 28

¹²⁰ *Id.*, at para. 49

¹²¹ *Antolik*, High Court, para 16

¹²² *Antolik*, District Court, paras. 57-58

¹²³ Interview with Ken Legat, New Zealand Police (May 2006)

¹²⁴ *Antolik*, District Court, para. 54

¹²⁵ *Id.*, at para. 55

¹²⁶ *Antolik*, High Court, para. 18

¹²⁷ Sentencing Act, s 9(2)

¹²⁸ *Antolik*, High Court, para. 17

¹²⁹ Compare PRA s 20-23 which allows for a maximum sentence of 7 years, and PRA s 16 requiring coercion and carrying a maximum sentence of 14 years.

years.¹³⁰ Hopefully, sexual predators will not be treated so leniently in future cases brought under the PRA. After serving his two-year sentence Antolik was served with a deportation order, but left the country of his own volition.¹³¹

The criminal acts committed by Antolik in hiring three underage prostitutes would be viewed as people trafficking under the U.S. definition, as the victims were not yet 18 years of age.¹³² As there was no international movement of an individual, New Zealand law does not view this crime as trafficking. However, New Zealand law does provide protection for those under 18 years of age, who engage in commercial sexual activity. By facilitating the removal from society of individuals that seek to exploit children, the PRA indirectly protects not only these victims from future exploitation, but also other potential underage victims. The goal of both countries is that such crimes be prosecuted and the offender punished.

2. R v William Archibold Gillanders

Another case prosecuted under the PRA in Christchurch involved a 61-year-old brothel owner, William Gillanders, who had been involved the sex industry for a number of years. Gillanders ultimately pleaded guilty to helping a girl under the age of 18 provide sex for money and to receiving payments from her engagement in commercial sexual activity.¹³³ This was the first sentencing under the Prostitution Reform Act for this type of offence.¹³⁴ The first girl employed by Gillanders at his brothel was a 16 year old. Gillanders knew the girl's age when she answered one of his advertisements and told her "we can work around that."¹³⁵

Gillanders hired the underage girl and put her to work, often for 12 hours a day.¹³⁶ The victim worked for 25 days and, at a conservative estimate, earned at least \$6,000, with Gillanders keeping half of that.¹³⁷ Gillanders booked the 16 year old with approximately three or four clients a day, but some days as many as seven or eight.¹³⁸ The victim reported to the court that she would not have engaged in commercial sex work if Gillanders had not offered her a job and that she was no longer engaged in said work.¹³⁹ The court did find that this was the victim's first foray into the commercial sex industry.¹⁴⁰

¹³⁰ *Antolik*, High Court, para. 18

¹³¹ Interview with Todd Hamilton, Detective, New Zealand Police (21 April 2006). Antolik is an Australian citizen.

¹³² 22 U.S.C. s 7102(8). See also United Nations, *Trafficking in Human Beings: Global Patterns* (April 2006), which argues that children under 18 cannot give valid consent to engage in prostitution and that this, therefore, is trafficking.

¹³³ *R v Gillanders*, DC (Christchurch) T0313661/05, para 1

¹³⁴ "Brothel owner who employed under-age girl jailed." (4 May 2005) *The New Zealand Herald*. The article described Gillanders as the "first man to be charged under new laws that decriminalised prostitution but increased the penalties for those helping under-age girls work in the industry."

¹³⁵ "Underage Prostitute Employed" (13 April 2005) *The Press*, Christchurch

¹³⁶ *Gillanders*, para. 6

¹³⁷ *Id.* Gillanders charged \$80 for a half hour and \$120 for an hour. "Sunday" (May 8, 2005)

¹³⁸ "Sunday" (May 8, 2005)

¹³⁹ *Gillanders*, para. 8

¹⁴⁰ *Id.*, at para. 9

The judge stated that his primary goals in sentencing were “deterrence, and denunciation, and I might add, example is another goal.”¹⁴¹ The judge went on to note that, “the person who employs the prostitute is in a worse position because he is making her services available to more persons.”¹⁴² The PRA had enhanced the sentence to seven years for those that assist, receive earnings from or contract for commercial sexual services of someone under 18.¹⁴³ In balancing factors at sentencing pursuant to the Sentencing Act, the judge did note that the victim was over 16 and that there was no coercion, but that the girl was vulnerable and Gillanders had harmed her self-esteem.¹⁴⁴

Ultimately, the judge sentenced Gillanders to one year and nine months in prison.¹⁴⁵ In the discussion of factors considered prior to sentencing, the judge talked about the element of coercion in a manner that does not accord with the PRA. The PRA distinguishes between “inducing or compelling persons to provide commercial sexual services” and hiring a person under the age of 18 to work in a brothel, both in terms of the crime charged and the maximum sentence.¹⁴⁶ However, in *Gillanders*, after recognising the protective nature of the PRA which presumed harm to those under 18 who engaged in commercial sexual activity, the judge went on to find the following:

There was no coercion in this case. The girl was a free agent and acted as one. There was no financial exploitation. The money was shared. She provided the service and you provided the facilities, the customers, advice and a measure of protection.¹⁴⁷

As a sentencing factor, the willingness of an underage youth to engage in commercial sex should not inure to the defendant’s benefit. When the victim is under 18 years of age the PRA presumes exploitation having created a separate crime for those who engage in commercial sex with those under 18 years of age. The crime is distinct from the provision of the PRA which criminalises inducing or compelling someone of any age into commercial sex. The courts need to view those under 18 engaged in commercial sex as victims. The Judge’s view in *Gillanders* that the victim was a “free agent,” willingly on the street, and even benefiting from Gillanders’ protection, should not be used by the courts to mitigate this behavior. One advantage to the U.S. law with respect to underage victims is that the definition finds that trafficking occurs when the victim who is sexually exploited is under 18 regardless of any other acts on the part of the defendant.¹⁴⁸ It establishes a framework that sees the young person as a victim.

The victim in the *Gillanders* case was interviewed by the current affairs programme “Sunday.”¹⁴⁹ Her identity was disguised with the use of a wig and she was referred to as “Lisa,” not her real name. According to the victim she had run away from home at 14 and dropped out of school by 16. She admitted she was a difficult teenager and

¹⁴¹ *Id.*, at para. 16

¹⁴² *Id.*, at para. 17

¹⁴³ PRA, s 23

¹⁴⁴ *Gillanders*, paras. 14, 15, 19-21; Sentencing Act, s 7-9

¹⁴⁵ *Id.*, at para. 24

¹⁴⁶ See also PRA, s 16 and ss 20-23

¹⁴⁷ *Gillanders*, para. 22

¹⁴⁸ 22 U.S.C. s 7102(8)

¹⁴⁹ “Sunday” (May 8, 2005)

was vulnerable and mixed-up. She told the news magazine that she answered Gillanders' advertisement out of "desperation."¹⁵⁰ She had no where to live and Gillanders offered housing when her other options were a public park or a bus shelter. Gillanders made a habit of preying on vulnerable girls. In "Lisa's" own words, this was "the biggest mistake I'll ever make in my life. There is no glamour to it, whatsoever. It's rough, and it's raw, and it's it's dirty."¹⁵¹ "Lisa" felt like she had no other choice. The PRA does not criminalise the decision by underage youth to engage in commercial sex, and, thus, "Lisa" will not have a criminal record. While Gillanders may not have forced or coerced Lisa in the traditional definition of those words, he did force and coerce her by virtue of his station in life and his experience, particularly when compared to a 16 year old runaway.

On the deterrent front, in this particular case the defendant should have received more time in custody. During the case, while criminal charges were pending, Gillanders continued to run a brothel out of his home without a license.¹⁵² At the time of sentence, Anna Reed, spokeswoman for the New Zealand Prostitutes Collective in Christchurch, said "she hoped for a longer sentence."¹⁵³ After being released from custody, one of Gillanders early acts was to drop by the Prostitutes Collective in Christchurch where he proceeded to purchase 140 condoms.¹⁵⁴ He is prohibited under the PRA from operating a brothel and stated that these condoms were for his personal use.¹⁵⁵

3. R v Raeleen Prendeville and Christine Marie Campbell

Two women were prosecuted in Wellington for employing a 14 year old and a 17 year old in a brothel. Both the brothel owner, Prendeville, and the receptionist at the brothel, Campbell, were prosecuted and pleaded guilty to charges of entering into an arrangement for commercial sex and of facilitating commercial sex with girls under 18.¹⁵⁶ Campbell interviewed both girls, and did ask the 14 year old for identification.¹⁵⁷ Both girls lied about their ages, and no identification was ever produced by the girls or asked for again.¹⁵⁸ The owner, Prendeville, was present for the interview of the 14 year old.¹⁵⁹ According to the investigator on the case, the receptionist had called the parents of the 17 year old and pretended she was a waitress at a hotel in order to help the 17 year old explain the money she was earning.¹⁶⁰ Further, the younger girl ran away from home and began living at the brothel.¹⁶¹

¹⁵⁰ Id.

¹⁵¹ Id.

¹⁵² Id.

¹⁵³ "Owner of brothel jailed over girl" (4 May 2005) *The Press*

¹⁵⁴ Interview with Anna Reed, New Zealand Prostitutes Collective (Christchurch, April 2006)

¹⁵⁵ PRA, s 36(2); Reed Interview. Under the PRA Gillanders could apply for an offer waiving his disqualification to operate a brothel, but said application would have to be forwarded to the Commissioner of Police and ruled upon by a District Court Judge (PRA, s 37).

¹⁵⁶ "Brothel pair spared jail term over girl, 14" (4 March 2006) *Dominion Post*

¹⁵⁷ Interview with Shane Cotter, Detective Senior Sergeant, New Zealand Police (Wellington, March 2006)

¹⁵⁸ Id.

¹⁵⁹ Id.

¹⁶⁰ Id.

¹⁶¹ *R v Raeleen Jo-Ann Prendeville*, DC (Wellington) 085-5975/05, para. 4 (*Prendeville*, September 2005)

Thus, even if Campbell did not know how old the girls were, being asked to call one of the girl's parents to provide an explanation of her employment, and being required to provide housing for the other at the brothel should have raised suspicion. The Judge found that between them, the two girls earned about \$6,000 from the approximately 40 appointments booked by the brothel.¹⁶² Estimates are that the brothel made about \$2,000 off of each girl.¹⁶³

A judge in this case was called upon to determine whether the PRA imposes strict liability on brothel owners, as well as customers, who employ or hire underage girls.¹⁶⁴ The Court looked to the legislative history and the language of the statute to aid in the determination of whether the offenses required proof of mens rea as to the age of the persons involved. The Crown argued that as Parliament removed the defence of reasonable belief from the act, no such defence should be available.¹⁶⁵ The Court found that “[t]he legislation is intended to protect the young from sexual exploitation. It is intended to protect the vulnerable in society.”¹⁶⁶ To further this goal, the Court held that the onus of establishing the defence of total absence of fault should be on the accused. Thus, for the legislation to be effective “in protecting those under 18 years of age from exploitation by others, and from their own decision to engage in prostitution,” the Crown need not bear the burden of proof of knowledge of age on the part of those who employed or engaged such prostitutes.¹⁶⁷ The Court did not find that there was absolute liability, so a defendant can still demonstrate he was not at fault with respect to determining age. For example, a defendant may try to establish that there was deception on the part of the sex worker, such as the provision of false identification. However, it is no longer a defence for someone to simply say they thought the girl was over 18. The burden now lies with the defendant to prove a total absence of fault on this issue. This interpretation of the law should prove helpful in achieving successful prosecutions under the PRA.

The case contains a strong message for those who would hire young people to check their identification. However, the judge at sentencing seemed to find that defendant Campbell may have been justified in feeling that it was the owner's job to check identification.¹⁶⁸ The facts of the case and the law require a different finding. The receptionist had interviewed both girls and asked for identification, with even her lawyer admitting that Campbell had always been aware that the girls needed identification.¹⁶⁹ The law does not reduce the culpability of the defendants based on the victims' complicity. As the Court noted when sentencing the brothel owner: “People in your position have the duty to protect the young from themselves. The purpose of the legislation is to prevent the exploitation of the young and to endeavour to protect them from themselves, during a period in their lives when they may be particularly vulnerable.”¹⁷⁰ The underage girls in this case were never made to produce identification, even though the owner and the receptionist knew about the age

¹⁶² “Brothel pair spared jail term over girl, 14”

¹⁶³ Cotter Interview

¹⁶⁴ *R v Raeleen Jon-Ann Prendeville and Christine Marie Campbell*, DC (Wellington) CRI [22 March 2005]

¹⁶⁵ *Id.*, at para. 12

¹⁶⁶ *Id.*, at para. 18

¹⁶⁷ *Id.*, at para. 19

¹⁶⁸ “Brothel pair spared jail term over girl, 14”

¹⁶⁹ Cotter Interview

¹⁷⁰ *Prendeville*, September 2005, at para. 6

requirements.¹⁷¹ The judge's ruling ensures that willful blindness to the requirements of the law will not be tolerated by the courts.

Ultimately, both defendants were sentenced to community work, with Prendeville, the brothel owner, receiving 300 hours and Campbell, the receptionist, receiving 180 hours.¹⁷² This sentence does not further the purpose of the PRA and does nothing to deter future brothel owners from hiring underage girls. The PRA has a maximum sentence of seven years for brothel owners who either assist a person under 18 years old to provide commercial sexual services or receive earning from a person under 18 who is providing commercial sexual services. The judge himself noted that community-based sentences "would be no discouragement to those who decided to run the risk" of employing underage sex workers.¹⁷³ However, the Court went on to find that particular personal circumstances in this case, particularly defendant Prendeville's medical condition of severe depression and chronic anxiety and the fact that she had a four-month-old baby, made imprisonment inappropriate.¹⁷⁴ The fact that neither woman received jail time, even given their personal circumstances, negates the seriousness of the crime. A potential benefit from using the term internal trafficking to refer to cases such as the employment by a brothel of underage youth may be that the judiciary will recognise the seriousness of these offences and sentence accordingly.

4. R v Allan Geoffrey Pahl

At least one Court has approved the use of undercover sting operations as a basis to identify and prosecute those who are interested in commercial sex with persons under the age of 18. As there is a public desire to prosecute the offenders who seek out underage girls this case may be useful as precedent. In *R v Allan Geoffrey Pahl*, the defendant agreed to pay \$500 for sex with "Amy" after being told she was 15.¹⁷⁵ He also asked to book Amy for a friend.¹⁷⁶ Pahl then showed up at the designated hotel with \$880 in his possession, "sufficient money to meet the payments discussed on the telephone."¹⁷⁷ Defense in the case tried to argue that as there was no 15 year old, Pahl could not be found guilty as the age could not be proven. The Court denied this defence, stating that "what matters is the basis upon which the accused proceeded ..., he plainly believed that he had arranged to meet Hannah and her 15 year old daughter for sex. It is his belief and what was agreed upon that is important."¹⁷⁸ The PRA criminalises *contracting* for commercial sex with those persons under 18 years, not the sexual act itself.¹⁷⁹ The Court found that "whether or not the accused proceeded to act on the arrangement or to carry it out, is quite immaterial. To my mind, the fact that the arrangement was never carried out in the sense that money never changed hands and sex never took place, because Amy did not exist, could only go to

¹⁷¹ "Brothel pair spared jail term over girl, 14"

¹⁷² "'Disheartening' terms for under-age sex pair" (16 March 2006) *NZ Truth*

¹⁷³ *Prendeville*, September 2005, at para. 15

¹⁷⁴ *Id.*, at paras. 15-18

¹⁷⁵ *R v Allan Geoffrey Pahl*, DC (Dunedin) T03/13150/04, paras. 7 and 9

¹⁷⁶ *Id.*, at para. 10

¹⁷⁷ *Id.*, at para. 11

¹⁷⁸ *Id.*, at para. 28

¹⁷⁹ PRA, s 22

penalty.”¹⁸⁰ The undercover operation was not deemed to amount to entrapment or unfairness.¹⁸¹

The District Court in Dunedin accepted defendant Pahl’s diagnosis by a psychologist as having an obsessive-compulsive disorder, and subsequently sentenced him to nine months supervision and forfeiture of \$880 to Police. It is unclear how an obsessive-compulsive disorder would lead one to elicit commercial sex from an underage girl. Pahl’s attorney also stated that Pahl was simply acting out some sort of fantasy. However, as the District Court Judge noted, “the question of fantasy is not something that the accused himself has mentioned when interviewed by the police.”¹⁸² While undercover use of Police to catch offenders who seek commercial sex with underage victims should deter this conduct, light sentences like that given Pahl will do nothing to deter the defendant or other like offenders. The sentence does not appear to comport with the goals of the PRA.

5. **R v Chaz Antonio Duvelle, also known as Anthony Robert Tubou**

There have been no cases brought in Auckland under the PRA.¹⁸³ The case of *R v Duvelle*, which pre-dated the PRA, demonstrates the type of case that can be viewed as internal trafficking as the defendant forced one underage youth and one 20 year old into providing commercial sex. Duvelle was charged with underage sex, living off the earnings of prostitution and assaults by a male on a female.¹⁸⁴ In that case, Duvelle threatened two women into prostitution, one aged 20 and one initially aged 14.¹⁸⁵ The 20 year old was regularly assaulted by Duvelle and told by him that he would kill her mother and her dog if she did not work in a massage parlour and give him her earnings.¹⁸⁶ Under the PRA this case would clearly fall under section 16’s provisions which criminalise inducing or compelling a person into commercial sex via threats. The 14-year-old victim was initially met on a chatline. Forty-five-year-old Duvelle took her to his home, “plied her with alcohol and had sexual intercourse with her.”¹⁸⁷ The judge found that Duvelle asked the victim, who had since turned 15, to prostitute herself and placed an advertisement in the paper resulting in customers coming to his home to have sex with the victim while he hid nearby. Then, Duvelle obtained a forged certificate suggesting that the victim was 18 so she could go to work in a massage parlour. Ultimately the court found that the victim earned \$40,000 for the

¹⁸⁰ *R v Allan Geoffrey Pahl*, DC (Dunedin) T03/13150/04, para. 18

¹⁸¹ *Id.*, at para. 31. In a case prior to *Pahl*, a defendant in Palmerston North requested an under-age prostitute from an agent representing a number of prostitutes. The agent was concerned about this request and contacted police. Thereafter, an undercover police agent was sent to meet the defendant at a motel. The defendant ultimately pleaded guilty to violating sections 22(1) and 23(1) of the PRA and was sentenced to a fine of \$750 and court costs of \$130.00. Interview with Lisette Nolan, Ministry of Justice (July 2006).

¹⁸² *Id.*, paras. 18-19

¹⁸³ *The Press* in Christchurch tends to focus more on prostitution than does the Auckland-based *New Zealand Herald*. Fitzharris Interview. It is beyond the scope of the research for this report to determine whether the media is influencing the number of prosecutions or simply reporting them.

¹⁸⁴ *R v Chaz Antonio Duvelle also know as Anthony Robert Tubou*, HC (Auckland), 024933/03, para. 12; Crimes Act, s 134; Crimes Act s 148 (Repealed by the PRA 2003 No 28, s 48(1)(a)); Crimes Act s 194

¹⁸⁵ *Duvelle*, at paras. 2-5

¹⁸⁶ *Id.*, at para. 4

¹⁸⁷ *Id.*, at para. 5

defendant from prostituting herself.¹⁸⁸ During this time, Duvelle himself had no job.¹⁸⁹ The judge sentenced the defendant to preventive detention due to the numerous aggravating factors: repetitive offending over a year; forgery to come up with a birth certificate stating that the victim was aged 18 years; denial to Police that went so far as building a trap door under which the victim could hide if Police came to his house; the damage caused to the two victims; the fact that the defendant was on parole when the offending began; and two serious previous convictions for sexual assaults.¹⁹⁰ While the law under which Duvelle was prosecuted is different, the sentencing factors considered by the Court to enhance and reach his sentence are still applicable and will be used in prosecutions under the PRA.¹⁹¹ Duvelle's case is more egregious than those of Gillanders or Prendeville as it involved physical threats and actual assaults to compel the victims into prostitution. Duvelle also provided alcohol and fraudulent identification to one of the victims, to induce her into prostitution. The facts of this case would, today, support bringing charges against a defendant under section 16 of the PRA, which criminalises inducing or compelling a person into prostitution regardless of age, and has a maximum sentence of 14 years. The physical threats and assaults make this a case of internal trafficking.

In this case, the detective had to exercise great patience and diligence for the prosecution to succeed. The underage victim initially did not want to cooperate against the man she considered her boyfriend.¹⁹² Later the victim was afraid of the defendant. The patience the detective exhibited is often required in cases with victims who may not identify themselves as victims.

6. Police v T (Name Suppressed Defendant)

Another individual is currently facing charges under the PRA in Christchurch for recruiting a 14-year-old girl and a 16-year-old girl to work in his brothel and provide sexual services. This 58-year-old man has received name suppression and will be referred to as NS-T. The 14-year-old was described in court as a methamphetamine or "P" user, and the 16-year-old as having severe learning difficulties.¹⁹³ The Police allege that the defendant himself paid the 14-year-old victim for sexual intercourse with both money and cannabis.¹⁹⁴ He then employed both girls in his brothel, operated from a house without an Operators Certificate.¹⁹⁵ While they were working for him, NS-T continued to give both girls cannabis and bought them the lingerie they wore to work.¹⁹⁶ He kept the majority of the money the girls earned.¹⁹⁷

NS-T has challenged the means by which the victims provided evidence at his preliminary hearing.¹⁹⁸ Under the Summary Proceedings Act (SPA) section 185C, the

¹⁸⁸ *Id.*, at para. 8

¹⁸⁹ Interview with Phillip Cox, New Zealand Police (Auckland, May 2006)

¹⁹⁰ *Duvelle*, paras. 7, 16-22, 40; Cox Interview

¹⁹¹ Sentencing Act 2002, s 9

¹⁹² Cox Interview

¹⁹³ "Man fights sex charges on three fronts" (November 2, 2005) *The Press*

¹⁹⁴ Interview with Todd Hamilton, Detective, New Zealand Police, (Christchurch, April 2006)

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Police v T*, DC (Christchurch) 009-004237/05

victims' statements were provided in written format on the basis that these were victims of sexual offences under section 185A(b). The defendant argued that the victims were not "complainants" as that term is defined by SPA section 185C as they made no complaints against defendant. Thus, he should be allowed to cross-examine them orally at depositions.¹⁹⁹ The Court found that charges brought under the PRA did fall within the phrase "any other offence against a person of a sexual nature" of the SPA s 185A(b).²⁰⁰ The Court also found that the defendant's proposed definition of a complainant was too narrow, and stated that "the 'complainant' is the person against whom the offending was allegedly committed."²⁰¹ The Court looked to the purpose of the legislation and found that "the wider issues of protection of vulnerable people within the context of sexual offending are at the heart of the matter."²⁰² Even though the defendant argued that the girls "consented," the PRA assumes that girls under 18 cannot consent to commercial sex acts. The Court's ruling protects victims of child sexual exploitation. This case is on-going, with defendant NS-T proceeding to trial.

In addition to the charges brought by the Crown, it is arguable that NS-T could be charged under section 16 of the PRA as well. NS-T induced or compelled the girls into prostitution by promising and in fact providing them with cannabis, meaning he committed an offence punishable by imprisonment.²⁰³ As more cases are brought under the PRA, the Police and the Crown can bring charges under section 16 as well, with a maximum penalty of 14 years, rather than the seven year maximum under sections 20-23. This case fits within the U.S. definition of internal trafficking.

B. Prosecutions under the Crimes Act: Smuggling Migrants

Smuggling and trafficking cases can be investigated in the same manner. The distinction between the two cases is most helpful in determining what charges to bring and who to bring them against. People who are being smuggled tend to be complicit in the deceptive arrangements to get them into a country. The relationship between the smuggler and the people who pay him for his services is usually contractual, and tends to end once the individuals are in the country. Governments are interested in distinguishing between the types of case because victims of trafficking may be entitled to some government services and may not be candidates for prosecution themselves. In a trafficking case the relationship between the parties is exploitative with the trafficker coercing or deceiving the victim. Those who traffic migrants and those who prostitute underage children both abuse their power and the victim's position of vulnerability.

1. R v Chechelnitski

The first case brought in New Zealand under the Crimes Act provisions for smuggling

¹⁹⁹ *Id.*, at para. 23

²⁰⁰ *Id.*, at para. 31

²⁰¹ *Id.*, at para. 33

²⁰² *Id.*, at para. 34

²⁰³ See PRA, s 16(2)(b). The defendant could also have been charged under Misuse of Drugs Act 1975 for distribution.

migrants involved three Ukrainians smuggled into New Zealand by a Russian-born Israeli, Victor Chechelnitzki.²⁰⁴ The three Ukrainian nationals, Sergiy Manyk, Iryna Manyk, and Anatoliy Hushul made arrangements with an associate of Chechelnitzki to enter New Zealand by purchasing false Israeli passports for the price of US \$7,800.²⁰⁵ Chechelnitzki traveled to Kiev to meet the three Ukrainians and then met up with them again in Thailand, where he served as their guide. Chechelnitzki collected money from them in Thailand which he used to purchase airline tickets for them and himself. While in Thailand, Chechelnitzki “‘schooled up’ the Ukrainians on Jewish phrases and customs, provided them with Jewish magazines, and advised them on what to say if they were questioned by the New Zealand authorities.”²⁰⁶ Initially the group was to travel via Australia, but when they discovered they did not have the proper visas for Australia, Chechelnitzki changed the travel arrangements to fly via Hong Kong. Chechelnitzki and the others were arrested at the airport trying to enter New Zealand. The judge at sentencing compared Chechelnitzki’s role to that of a courier in a drug case, and found that the Ukrainians were not victims but willing participants.²⁰⁷ The lower Court judge sentenced Chechelnitzki to three years six months imprisonment. The sentence was upheld on appeal with the higher Court commenting that “[m]igrant smuggling must be seen as serious offending.”²⁰⁸

The judge in the Chechelnitzki case discussed the difference in a smuggling case versus a trafficking case.

The offence of smuggling migrants is concerned with persons who, for material benefit, arrange for illegal migrants to enter or be brought to New Zealand, knowing, or being reckless as to whether, the migrant is unauthorised. Trafficking, conversely, is concerned with the situation where the migrant’s entry into New Zealand has been procured by acts of coercion or deception.²⁰⁹

In a related case, defendant Markevich was prosecuted for being in possession of a false passport and of dishonestly obtaining a false driver’s license.²¹⁰ Possession of a false passport carries a maximum penalty of 10 years versus the 20 year sentence faced by Chechelnitzki.²¹¹ Markevich and another Ukrainian were traveling unescorted from Bangkok on stolen Israeli passports, and entered New Zealand a month after Chechelnitzki was arrested.²¹² Markevich was ultimately sentenced to 18 months imprisonment.²¹³ Other Ukrainian nationals who arrived on the same flight as Markevich received lesser sentences of four months imprisonment each, while a third

²⁰⁴ *R v Chechelnitzki*, CA 160/04

²⁰⁵ *Chechelnitzki*, at para. 14. The Israeli passports were made from a series of 377 blank passports that had been stolen in Israel in 2003. *Id.* at para. 18. Interview with Hamish Macdonald, Detective, New Zealand Police (Auckland, May 2006).

²⁰⁶ *Id.*, at para. 16

²⁰⁷ *Id.*, at para. 25

²⁰⁸ *Id.*, para. 51

²⁰⁹ *Id.*, at para. 3

²¹⁰ *Markevich v R*, (2004) 21 CRNZ 41 (HC), para. 3. The false passport charge was brought under s 31(1)(f)(i) of the Passports Act of 1992 and the second charge laid under s 228(a) of the Crimes Act.

²¹¹ Passports Act 1992, s 31(1)(f)(3)

²¹² Macdonald Interview

²¹³ *Markevich*, at para. 17

Ukrainian received five months three weeks imprisonment.²¹⁴ This disparity in sentences was upheld by the High Court, which agreed with the Crown that deterrence was an important factor in smuggling cases. The Court went on to cite the lower court's holding that deterrence in cases involving false entry documents should normally result in a prison sentence, and held that the lower court judge was appropriate in starting the sentence calculation at two years, prior to considering any mitigating factors.²¹⁵

The *Markevich* opinion from the High Court provides helpful guidance for future smuggling cases and cases brought under the Passports Act.

- (i) Was the passport used issued by a country of which visitors are not required to get visas for shorter term visits to New Zealand?"
- (ii) Was the passport obtained deliberately for the purpose of entering New Zealand illegally?
- (iii) Was the offence premeditated and deliberate?
- (iv) Was the passport part of a "package" of documents designed to make the bearer appear to be of a different nationality?
- (v) Was there a genuine desire on part of offender to escape persecution?
- (vi) Was the offender part of a commercial enterprise providing false documents for a financial benefit?
- (vii) Is the offender a known criminal, terrorist, or a security risk?²¹⁶

The Court noted that all factors, except the last, were present in *Markevich*'s case and, thus, a starting point of two years for a sentence was appropriate. Specifically the Court provided future guidance that "offending under s 31(1)(f) of the Passports Amendment Act 2002 motivated by a desire to enter New Zealand illegally, could justifiably attract sentences with start points ranging from 15 months to 3 years."²¹⁷ The lower sentences imposed in a similar case on the fellow Ukrainians were deemed "manifestly inadequate" by the Court.²¹⁸

The Police who investigated and prosecuted this case noted that it was time consuming and that *Chechelnitski* had entered New Zealand on more than one occasion, very likely with other "customers" of the smuggling operation.²¹⁹ Similar to the case in which he was caught escorting illegal individuals into New Zealand, every time *Chechelnitski* came to New Zealand he travelled through Bangkok. Police stated

²¹⁴ *Id.*, at para. 22. Two different judges handled these cases. Police successfully prosecuted a total of eight Ukrainians and received sentences ranging from four months to three and a half years for the ring-leader *Chechelnitski*. Macdonald Interview; *Chechelnitski*, at paras. 1, 59

²¹⁵ *Markevich*, at paras. 33 (citing the lower court's opinion, para. 13) and 43

²¹⁶ *Id.*, at para. 42. Leniency factors were also listed, including "an early confession of guilt; immediate or early abandonment of refugee claims which are false or manifestly unfounded; a willingness to provide cogent information leading to the detection of co-offenders and people smugglers; and an acceptance of and cooperation with a speedy return to the offender's country of origin." *Id.*, at para. 48.

²¹⁷ *Id.*

²¹⁸ *Id.*, at para. 44

²¹⁹ Interviews with Timothy Chao, Detective, New Zealand Police, and Hamish Macdonald, Detective, New Zealand Police (Auckland, May 2006). According to Immigration records, *Chechelntiski* only entered New Zealand once under his own identity. Arron Baker, National Manager – Border Security & Compliance Operations, Department of Labour, Comments on Report (Wellington, July 2006).

it only took one week to get permission from the Attorney General to prosecute the case.²²⁰

One lesson the Police learned was to use their own interpreters, as the interpreter initially used in the case was a friend of one of the people employing the Ukrainians. The people smuggling workload was to be taken from Police after this case, because it was requiring an inordinate amount of their time and resources, and detracting from their ability to work on national security issues.²²¹ There were allegations that approximately twelve Ukrainians were in the country on stolen or false Israeli passports, and were working in the construction business. One particular individual, a woman, claimed she had been forced into prostitution, but the detectives felt it was more likely she chose prostitution as she could make more money.²²² This conclusion was supported by the fact that the individual who had brought her in was no longer in the country and there were none of the indicia of control found in a trafficking case.

2. R v Deny Setiadi

Most recently Deny Setiadi, an Indonesian man aged 28, was sentenced to four years and six months for smuggling fellow Indonesians into New Zealand to work in orchards in the Napier/Hawke's Bay area.²²³ Setiadi pleaded guilty to 15 charges: seven charges under section 142(1)(ea) of the Immigration Act 1987 for aiding and abetting a person to remain unlawfully in New Zealand for material benefit; four charges under section 142(1)(eb) of the Immigration Act for recklessly aiding and abetting a person to enter New Zealand unlawfully; and four charges under section 98C of the Crimes Act 1961 for smuggling migrants into New Zealand.²²⁴ The Court labeled Setiadi "an integral part of a people smuggling racket."²²⁵ An aggravating fact in Setiadi's case was the exploitation of the immigrants; each had paid NZ\$8,000 for what they believed would be lawful entry.²²⁶ When the individuals received their passports, they had their photos substituted for those of the legitimate holder and were told they could use it or not, but would not get their money back. According to the Crown prosecutor, Setiadi acted as a subcontractor, arranging work in local orchards where the illegal immigrants would work 12 hours a day, seven days a week.²²⁷ Setiadi also provided housing in Hawke's Bay, with a three bedroom home at one time housing eleven immigrants.²²⁸ Setiadi himself had overstayed his one-month visitor's permit by approximately three years.²²⁹

Smuggling typically ends with the arrival of the migrants at their destination. The smuggler gets the individuals across the border and leaves them. The Court noted that the migrants from Indonesia were purely economic and that "with other developed countries, New Zealand is a potential destination for citizens from the Third World

²²⁰ Id.

²²¹ Id.

²²² Id.

²²³ *R v Setiadi*, HC (Napier) 041-002770/06, para. 12

²²⁴ Id., at paras. 5-6

²²⁵ Id., at para. 32

²²⁶ "People-smuggler jailed 4 ½ years" (2 June 2006) *Dominion Post*

²²⁷ Id.

²²⁸ "Smuggler jailed; victims offered NZ dream, they got cell" (2 June 2006) *Hawkes Bay Today*

²²⁹ *Setiadi*, at para. 8

seeking economic improvement.”²³⁰ Setiadi’s interaction with the migrants did not end once they arrived in New Zealand. He continued to assist by arranging jobs and providing housing and transportation. Were those who paid \$8,000 for the photo-substituted passports in any way victims? The migrants contend they thought the \$8,000 was to obtain legitimate employment, although the court did not accept this argument.²³¹ Law enforcement needs to analyse the facts in both smuggling and trafficking cases to determine whether to prosecute the migrants. Indicia of trafficking and victimisation can include whether the workers were paid standard wages and whether they kept longer than allowed hours. In other words, was the employer exploitative? Law enforcement should also examine the migrants’ living conditions. In this case, some of the migrants moved out of the house, an indication that they had mobility and were not held against their will.²³² If any debt was still outstanding to the smuggler, was a migrant paying it down, or were interest and other expenses so high that the debt was growing; was there debt bondage under the law?²³³ Was Setiadi or anyone else continuing to exploit the migrants to in some way generate illicit or illegal profits? In this case, some of the migrants worked for other contractors and did not appear to have any debt to Setiadi.²³⁴ There were no indicators that the migrants were compelled to work at a certain place or to work under inhuman conditions. Thus, the migrants in this Indonesian ring were not treated as victims, but, appropriately, were prosecuted for their crime of traveling on false documents. The seven Indonesians all received jail sentences of approximately 13 months.²³⁵ Ultimately, whether a case is prosecuted as a smuggling one or a trafficking one is important mainly with respect to how the migrants are viewed. Victims of trafficking tend to be more severely affected and in greater need of protection from re-victimisation and other forms of abuse than are smuggled migrants.

If Setiadi had decided to go to trial, instead of pleading guilty, this case would have raised difficult logistical issues common to trafficking and smuggling cases. If the seven individuals Setiadi helped harbour once they got to New Zealand had been sent back to Indonesia, they might not have wanted to return to testify. Further, a witness’ hesitancy may have been exacerbated by 13 months spent in custody. Cases with foreign witnesses are more expensive to prove.

If the Government determines in a particular case that the witnesses are in fact victims of trafficking, it will need to provide these individuals with a legal method for staying in the country. In trafficking cases victim witnesses would ideally be provided the resources to stay in the country until the time of prosecution. Immigration has the ability to provide a work permit or other type of appropriate permit.²³⁶ The ability to

²³⁰ *Id.*, at para. 29

²³¹ Interview with Daniel Kerr, Crown Prosecutor, Elvidge and Partners (July 2006). The man these individuals reported to in Indonesia, Andreas, was not further identified or prosecuted.

²³² *Id.*

²³³ Debt bondage is defined as:

the status or condition arising from a pledge by a debtor of his personal services, or of the personal services of any person under his control, as security for a debt, if the value of those services, as reasonably assessed, is not applied towards the liquidation of the debt or if the length and nature of those services are not limited and defined.

Crimes Act s 98(2). Debt bondage is subject to a penalty of 14 years. Crimes Act, s 98(1).

²³⁴ Kerr Interview

²³⁵ *Id.*

²³⁶ Baker Comments

remain in the country is greatly enhanced if victims are allowed to work pending the prosecution. There is some concern that the Government will leave itself vulnerable to charges of “buying” a witness’ testimony in cases like this. However, the prosecution can present this information to the jury in a straight-forward manner in its case-in-chief, and explain why the victim witnesses were allowed to remain in the country. The Government could increase the likelihood of a successful prosecution while at the same time decreasing the costs of and resources required in the case. In the Setiadi case, the Crown proceeded with warrants of commitment for the migrants, so they would not be deported, while they sought consent from the Attorney-General to prosecute the case.²³⁷ Frequently migrants get deported before charges are filed.²³⁸ Immigration officers need to consider potential smuggling and trafficking indicators when they encounter illegal migrants.

²³⁷ Crimes Act, s 98F allows for a person alleged to have committed a smuggling or trafficking offence to be held in custody, even though the Attorney General’s consent for bringing proceedings has not been obtained. In this case, consent was forthcoming.

²³⁸ Kerr Interview

4. SUCCESSFULLY PROSECUTING CASES

A. Identifying and Working With Victims of People Trafficking and Commercial Sexual Exploitation

In discussing the individual cases above, issues have been highlighted pertaining to victims of commercial sexual exploitation that are equally applicable to victims in people trafficking cases. Law enforcement cannot rely on individuals to “complain” that they are victims of trafficking. Underage victims may view Police as just another branch of the Government that has failed them or as people who will turn them over to Child Youth and Family Services, or what they perceive as undesirable foster care. Victims of coercion may feel that if they just keep working, their situation will improve. Victims in debt bondage may feel prostitution is their only choice to earn money. This type of self-identification is rare in the context of trafficking. Migrant victims may be afraid of Police, either because of corruption of law enforcement in their home country or because they have been told by their traffickers that the Police may simply deport them, or will not believe them. Migrant victims or those coerced by gangs or other individuals may have been threatened that if they report their situation, their families will face reprisals. They may also face language and cultural barriers to reporting their plight. Lastly, victims may have been so broken down by the traffickers they are incapable of reaching out for help.

Trafficking of people is usually either for exploitation in the commercial sex industry or for labour. Thus, Police and Immigration need to treat individuals found in certain occupations with greater sensitivity and awareness of potential trafficking scenarios. The sex industry in New Zealand would include brothels and street workers. The traditional labour markets where one might find workers exploited include agricultural work, factory work, construction, and domestic help.²³⁹ In terms of the sex industry, major metropolitan areas are the focus. Auckland, by virtue of its population, has the largest numbers of brothels and sex workers. Christchurch central contains New Zealand’s second-largest concentration of the sex industry.²⁴⁰ Illegal migrant agricultural workers have been found in the wine growing regions of Hawkes Bay and Blenheim. Thus, law enforcement in these areas needs to be vigilant for these types of cases.

Trafficking and sexual exploitation cases have unique issues with respect to victim which means they are not routine prosecutions. Generally, victims in underage prostitution cases or trafficking cases may not initially want to cooperate with Police. Rather, victims may wish to move on from a bad time in their life, may feel emotionally tied to the trafficker, may feel complicit in the behavior, may be embarrassed about what they did, or may even be afraid of the trafficker. Victims are vital however to a successful prosecution. Initially, in the name suppressed PRA case still pending in Christchurch, Police had reluctant witnesses. However, the investigator was patient with the victims, moved the case forward with determination, and has worked with the victims, at least one of whom now sees it as her case and is

²³⁹ Human Rights Center, *Hidden Slaves - Forced Labor in the United States*, September 2004, p.1

²⁴⁰ Tim Barnett, MP (11 Oct. 2000) 588 NZPD 6091

engaged in its prosecution.²⁴¹ Getting the victims away from the trafficker often makes them more cooperative as the trafficker's influence wanes. Trafficking cases require innovative prosecutors who are willing to work a case that continues to develop, as the facts and witnesses can remain fluid until the time of trial. Prosecutors and Police need to realise that trafficking cases are not "easy" victories, and move forward undaunted by the challenging issues.

A case brought prior to the PRA illustrates some of the difficulties with witness issues. In a case involving the Banden Krieg gang, Police in Christchurch found the gang had five to six underage prostitutes all of whom were addicted to drugs of one kind or another.²⁴² Of this group only one victim would cooperate as the others were afraid. This one victim wanted out and wanted help, but was not really suitable for the witness protection plan. The victim ended up as a ward of the state with the police officer as her guardian.²⁴³ Hopefully, today there would be better services available for victims in this type of case. This case was successfully prosecuted and the victim now works as a lab technician. Cases involving underage individuals engaged in prostitution are time consuming and resource intensive.

B. Building Relationships between Sex Workers and Police

In the cases brought under the PRA and already completed in Christchurch and Wellington, the victims cooperated and agreed to testify. In both those cities there were designated police officers who specifically worked cases involving crimes against commercial sex workers and crimes pertaining to at-risk youth. For example, the sex workers in Christchurch knew Detective Todd Hamilton in his capacity as a vice officer, as he had made himself a helpful presence on the street. One witness in a case brought under the PRA even asked for Detective Hamilton when a search warrant was executed at the place she worked.²⁴⁴ Having officers dedicated to sex crimes and crimes against sex workers, and who are known to those in the community of sex workers, creates a continuity and knowledge base that can be helpful in achieving successful prosecutions. A designated officer can also build relationships with the community that can prove informative and vital in identifying perpetrators.

The New Zealand Prostitutes Collective and Youth and Cultural Development concur that the Police in Christchurch are active in bringing cases under the PRA and have excellent relationships with individuals in the sex industry. Police even brought a case against a customer who would take his condom off during sex.²⁴⁵ Police took the complaint seriously as a public health issue and pursued charges against defendant Daniel James Morgan under the PRA for not taking "all reasonable steps to ensure a prophylactic sheath . . . is used."²⁴⁶ The Christchurch District Court fined Morgan

²⁴¹ Interview with Todd Hamilton, New Zealand Police (Christchurch, April 2006)

²⁴² Interview with Ken Legat, New Zealand Police (Christchurch May 2006)

²⁴³ *Id.*

²⁴⁴ Interview with Superintendent Sandra Manderson, District Commander Canterbury, New Zealand Police (Christchurch April 2006)

²⁴⁵ Interview with Anna Reed, Regional Co-ordinator, and Hannah Whittaker, New Zealand Prostitutes Collective (NZPC) (Christchurch, April 2006); "Unsafe sex fine is a legal first," *The Press* (13 July 2005)

²⁴⁶ PRA, s 9(1)

\$400 and ordered him to pay \$130 costs for “deliberately taking off his condom.”²⁴⁷ The Prostitutes Collective applauded the defendant’s sentence, and has notified other sex workers to be watchful of this individual in the future. According to NZPC, Morgan had removed his condom with other sex workers in the past.

The stronger relationships between law enforcement and sex workers may exist in Christchurch because in the last year two sex workers have been murdered there and everyone is taking threats and violence against workers seriously. The workers themselves report violence to the Police, who in turn provide NZPC with photos of people who have a history of violence against sex workers when the individual is released from custody.²⁴⁸ NZPC makes these photos available to sex workers. The lines of communication are open because the Police are treating sex workers with respect.

Police in Auckland are not pursuing cases against those hiring under-age or migrant prostitutes to work in brothels.²⁴⁹ Police in Auckland felt it would not take long to find immigrants illegally engaged in prostitution, but their priorities are drug related and violent crimes. The *Mandarin Times* in Auckland has run articles on Asian brothels and the lack of Police effort in investigating them.²⁵⁰ Police believe that there are many Asian women here on student permits who may be working, their own choice, in the prostitution industry.²⁵¹ Other Asian women may be here under conditions of debt bondage, as discussed below. Officers on the Asian Crime Unit in Auckland believe debt bondage cases are difficult to police because of the differences in culture. The women may not feel they are trafficking victims, because they want to work off their debt and then start sending money home. While visiting an Asian brothel in Auckland, the owner/manager told a member of the Asian Crime Unit that his workers had heard about Immigration raids and were not coming in to work.²⁵² Further, he had some workers who had been living on the premises and they had decided to all live off-site together, to avoid worry about Immigration. At a minimum, women are illegally working in the industry.

NGOs can help law enforcement build relationships with sex workers, which in turn leads to better information and enforcement of the law. NGOs can identify victims and provide victims with needed services like access to medical care, job training and temporary accommodations. A discussion of some NGOs that work with at-risk youth engaged in commercial sexual services and some migrants in the commercial sex industry is included below.

²⁴⁷ Id.

²⁴⁸ Reed interview

²⁴⁹ This statement is not intended to be a criticism. Auckland is a major metropolitan area with approximately 1.4 million people and the police operate on limited resources. Since the passage of the PRA they have not prioritised migrant prostitution, which they believe is under the jurisdiction of Immigration.

²⁵⁰ Interview with George Korja, Detective Sergeant, Asian Crime Unit, New Zealand Police (Auckland, May 2006); Chao interview (Auckland, May 2006).

²⁵¹ New Zealand Police, The Vice Scene in New Zealand, p. 3 (June 2001); Korja interview; Chao interview; Cotter interview. It is a condition of every permit granted under the Immigration Act 1987, that the holder of the permit may not provide commercial sexual services while in New Zealand, PRA s 19(2).

²⁵² Chao interview

5. OUTREACH PROGRAMMES THAT ARE MAKING A DIFFERENCE: SOLUTIONS FOR AT-RISK YOUTH²⁵³

While the PRA did increase penalties for those who engage in commercial sex with under-age workers, it did not include provisions for additional services for those at-risk youth.²⁵⁴ Detective Superintendent Malcolm Burgess summed up the police powers under the new law as a blunt instrument, stating that “enforcement is an option, but in terms of stopping under-age prostitution it’s a pretty blunt instrument. We would prefer to work with other agencies to help them so they (young sex workers) don’t feel they have to be engaged in under-age prostitution.”²⁵⁵ Police resources in New Zealand, as in other countries, are stretched thin. Enforcement can be difficult as Police frequently need the young girls’ cooperation against the individual offender who paid her for services. When Christchurch attempted to enforce an 11 p.m. curfew for under-age kids for two to three months, they actually ran into difficulty finding parents to come and get the kids.²⁵⁶ For every under-age sex worker there is likely to be a background of dysfunctional family relationships, runaway incidents, drug problems, and abuse.²⁵⁷ Services to address these areas are needed, in addition to stronger laws and successful prosecutions. Programmes need to be designed to address at-risk youth and provide alternatives to sex work for those under 18. The Justice and Electoral Committee that reported the Prostitution Reform Bill to Parliament did recommend consideration by the Government as to “what further support can be made available to assist young persons to avoid or cease working as sex workers.”²⁵⁸ Below is a survey of some of the organisations out there helping at-risk youth and those under 18 already engaged in sex work.

A. New Zealand Prostitutes Collective

The New Zealand Prostitutes Collective was formed in 1987 to promote the health and welfare of sex workers, assist in the exchange of information, and help decrease the stigma of sex work while increasing the self-esteem of sex workers. Today, NZPC has offices in nine New Zealand cities. They provide safe sex information and promote healthy sexual practices. As discussed elsewhere in the report, NZPC also works as an informal liaison between Police and sex workers. For example, NZPC in Christchurch passes on information about men with convictions for violence against

²⁵³ There are other Non-Governmental Organisations working to fight under-age prostitution and trafficking in New Zealand. This brief survey is not meant to be exhaustive, but provides examples of the kind of work being done, the resources police can employ in investigating cases and working with victims, and the types of programmes that are making a difference and should be funded by the New Zealand government. Not all NGOs working in this arena could be included in the report.

²⁵⁴ The Justice and Electoral Committee has reported that it is difficult for young people to support themselves if they are estranged from their families, and “further work is needed to examine how agencies can assist people in the 16 to 18 age group and prevent them from turning to prostitution as their only means of support. Reviewing the eligibility criteria for the independent youth benefit might be a start.” Prostitution Reform Bill, as reported from the Justice and Electoral Committee, p. 24

²⁵⁵ Act ‘fails to protect girls’, (15 Feb 2005) *The Press*, Christchurch

²⁵⁶ Interview with Bob Millar, Director, Salvation Army Street Outreach Service, (Christchurch, April 2006)

²⁵⁷ Millar Interview; Interview with Anni Watkin, Youth and Cultural Development, (Christchurch, April 2006)

²⁵⁸ Prostitution Reform Bill, p. 25

sex workers and in turn may tell Police when there is a new problematic “john” in the community or one who keeps asking for under-age clients.²⁵⁹ Older workers may tell NZPC when under-age workers enter the scene.

Members of NZPC at the Auckland office discussed the problem with under-age workers who may not have a family or financial support network.²⁶⁰ The Independent Youth Benefit from Work and Income New Zealand can be hard to get. There is nowhere for these children to go and no way for them to support themselves financially. NZPC-Auckland stated that smaller housing units that hold four at-risk youth would be ideal.²⁶¹ There is especially a need for housing for transgender under-age workers. NZPC in Christchurch echoed this need for housing, stating some young people were in the sex industry solely to earn money for accommodations.²⁶² Specifically, they noted a problem with emergency accommodations not being available during the day.

B. Awhina Teina

The Baptist Action Mission and its Community Services branch in Auckland opened a refuge home for young women, Awhina Teina, in December 2004.²⁶³ Awhina Teina means “embracing little sister” in Maori, and is a safe house open to young women between the ages of 12 and 17 who are at risk of becoming involved or are already involved in commercial sexual activity. Up to four girls can live at a time in this safe home environment. Awhina Teina provides shelter, a need that drives many young girls to the street in the first place, but also hopes to build healthy relationships. ECPAT (End Child Prostitution Pornography and Trafficking) reports that in its first year of existence Awhina Teina had nine residents, whose average age was 14 years.²⁶⁴ The average length of time stayed was 61 days, and the longest duration of stay was 164 days.²⁶⁵ There is a lack of safe housing options and services for teenage girls in Auckland and more residential houses like Awhina Teina are needed. Baptist Action Community Services describes a “policy gap” which exists for those under 18 who are not living at home, which results in there not being enough resources available “to meet the accommodation needs of vulnerable young women.”²⁶⁶ Awhina Teina receives the bulk of its at-risk girls from Child Youth and Family Services, although Police and NZPC have also given some referrals.²⁶⁷ So far, every girl that has stayed at the home has had physical and/or emotional abuse in their past.²⁶⁸ Many traditional families engaged in foster work, do not want the girls who

²⁵⁹ Interview with Anna Reed, New Zealand Prostitutes Collective (Christchurch, April 2006)

²⁶⁰ Interview with Anna Pickering and Kate Dickie, New Zealand Prostitutes Collective (Auckland, April 2006)

²⁶¹ *Id.*

²⁶² Reed Interview

²⁶³ New Zealand Council of Christian Social Services, “Effective Practice in Preventative Services: Six NZCCSS Member Studies,” p. 26 (04/04/2006)

²⁶⁴ ECPAT NZ INC, Newsletter December 2005. ECPAT is a global network of organisations and individuals working together for the elimination of child prostitution, child pornography and the trafficking of children for sexual purposes.

²⁶⁵ *Id.*

²⁶⁶ New Zealand Council of Christian Social Services, p. 29

²⁶⁷ Interview with Bronwyn and Greg Morris, Social Workers, Awhina Teina (Auckland, May 2006)

²⁶⁸ *Id.*

are at-risk.

Bronwyn and Greg Morris run Awhina Teina as a family unit and talk about establishing good habits, not imposing rules.²⁶⁹ The girls are required to attend school. In addition to the family, there is a residential youth worker living in the home to assist the girls as a peer and mentor. Bronwyn discussed the hope that some of the residential youth workers would go on to open their own houses for at-risk girls. The Morrises viewed each girl's time in the house as a chance to build "social capital"; for each girl to break bad habits, become more resilient, and increase self-esteem.²⁷⁰ The girls have often lacked healthy support prior to coming to Awhina Teina. The home is a proactive attempt to empower the girls so they realise that they have choices. Even after girls have left the home they remain in contact and maintain the relationship. Girls who have completed their stay and moved back into the community can provide a living example for the newer girls at Awhina Teina.

Awhina Teina is a role model for the types of homes needed in New Zealand, particularly in Auckland and Christchurch, which have a problem with runaways turning to street sex work to support themselves. ECPAT New Zealand, an organisation to protect children against commercial sexual exploitation, also believes that more emergency accommodations are needed for those under 18.²⁷¹ The Human Rights Commission also recently highlighted to the Select Committee, when testifying about the Manukau City Council (Control of Prostitution) Bill, the dearth of crisis intervention beds and places to take under-age sex workers in the greater Auckland area.²⁷² To seriously address the under-age prostitution issue the government, which has funded international venues for addressing trafficking, needs to fund additional safe-housing that will serve New Zealand's at-risk youth. The Awhina Teina model could be developed, expanded, and encouraged in other regions.

C. Te Aronga Hou Inaianei

Many forms of outreach are happening in the greater Auckland area. Mama Tere Strickland is co-founder of Te Aronga Hou Inaianei (TAHI), a Papatotetoe based group designed to help prostitutes, with a focus on transgender prostitutes, who want to leave the sex industry find jobs, housing and support services.²⁷³ Papatotetoe is a suburb of Auckland, with a large percentage of Polynesian and Maori peoples and an average income for families under \$25,000 per year.²⁷⁴ The TAHI team of volunteers goes out three nights a week to be available to sex workers as a resource and to hand out safe-sex materials, including condoms. The people on the street are predominantly Maori and Polynesian and there are a significant percentage of transgender workers.²⁷⁵ Mama Tere agrees that more safe houses are needed for

²⁶⁹ Id.

²⁷⁰ Id.

²⁷¹ Interview with Jane Foster, Director, ECPAT, New Zealand, (Auckland, April 2006)

²⁷² Rosslyn Noonan, Chief Commissioner and Joy Liddicoat, Commissioner, Human Rights Commission, Testimony to Select Committee (Wellington, May 2006)

²⁷³ Interview with Mama Tere Strickland, Director Te Aronga Hou Inaianei (TAHI), (Papatotetoe, May 2006). TAHI means "a new direction now."

²⁷⁴ Interview with Annah Pickering and Kate Dickie, New Zealand Prostitutes Collective (Auckland, April 2006)

²⁷⁵ Interview with Paul Walker and Phil Savil, New Zealand Police (Auckland, April 2006)

under-age workers and states that the kids are getting younger.²⁷⁶ She noted that on school holidays there are even more children on the street. In her experience the average age that someone starts in sex work is 14, and she believes the number of under-age street workers has gone up since decriminalisation.²⁷⁷

Mama Tere herself was a transgender prostitute at the age of 11 so she brings particular insight into why young people get involved in prostitution.²⁷⁸ Unfortunately her story is not that uncommon and is instructive on how some children end up on the street offering commercial sexual services. As a young boy, Mama Tere was repeatedly molested by a great-uncle from the age of four to ten years old, and, ultimately, he ran away from home at 11 years old.²⁷⁹ Police would regularly take him home, but he refused to stay there and was ultimately made a ward of the state. She stated, looking back, “runaways did not go to the police.”²⁸⁰ Instead, she confided in a “street mother” who gave her drugs to cope. Mama Tere spent the next 10 years in and out of prison, before going to a mental hospital for four months to treat depression and drug addiction.²⁸¹

TAHI also attempts to help transgender workers find employment opportunities away from the street. Mama Tere feels many street sex workers are out there just to survive; she refers to them as “survival sex workers.”²⁸² She is aware of young transgender and female workers out on the street and does tell police about them, noting it takes police any where from five minutes to three hours to respond.²⁸³ Mama Tere did think having more police walk the streets, rather than simply driving by, would be beneficial and demonstrate a police presence in the area. Under the PRA however, the under-18 sex worker is not committing a crime and police have limited ability to get them off the street. Mama Tere noted that drugs and sniffing glue are problems among street workers of all ages.²⁸⁴ Mama Tere speaks to Maori and Polynesian community groups and finds them receptive to her message of taking care of our youth. She wants to raise awareness of the issues, and rebuild young and transgender workers’ self-esteem, self-worth, and values.²⁸⁵

Specifically, Mama Tere would like to see some residential homes where police could take under-age girls in the middle of the night.²⁸⁶ At the homes, the under-age workers could be documented, for example taking their name and picture, and then given an opportunity to shower and a place to go to sleep. The next morning there would need to be a social worker available. Currently, there is no place to take workers under 18 at night when they are encountered by police. Police need to ascertain who these young people are and social workers need to find out why they are on the street. Once this information is known, then assistance can be specifically

²⁷⁶Mama Tere Interview

²⁷⁷ Id.

²⁷⁸ “Mama Tere Strickland”, TV1 documentary, screened March 14, 2005

²⁷⁹ Id.

²⁸⁰ Id.

²⁸¹ Id.

²⁸² Mama Tere Interview

²⁸³ Id.

²⁸⁴ Mama Tere Interview. NZPC (Auckland) also confirmed that glue-sniffing is common among Maori street workers, Pickering Interview.

²⁸⁵ Mama Tere Interview

²⁸⁶ Id.

designed for each under-age person. Under this scenario, the Government might also reach those at risk of entering sex work, those out on the streets, before they actually enter into prostitution. Mama Tere also suggested providing an 0800 phone number for runaways to call, just to have someone to talk to about their issues.²⁸⁷ Lastly, she suggested providing an 0800 number for street workers or customers to call and report under-age workers so that they could be picked up and taken to shelters.

D. Youth and Cultural Development

Presently, Youth and Cultural Development (YCD) works with Youth Justice issues and also provides youth outreach to sex workers in Christchurch three nights a week.²⁸⁸ The outreach provides sexual/health information and condoms and lubricant. This outreach is a useful tool of initial engagement with younger sex workers as it begins a relationship free of judgment and establishes a point of contact for future services. There is also a drop-in centre open once a week, with a nurse attending once a month.²⁸⁹ There are many reasons young people end up on the street and engaged in sex work: “lack of financial resources; solvent, alcohol and drug abuse/addiction; lack of support; mental health problems; family abuse histories; sexual identity confusion; and attraction to crime.”²⁹⁰

YCD noted a problem with young girls obtaining the Independent Youth Benefit from Child Youth and Family Services and Work and Income New Zealand. Youth aged 15 to 17 can qualify for this benefit, but must disclose why they are not living at home with their parent or guardian, which some are not comfortable discussing.²⁹¹ Child Youth and Family Services (CYFS) then interviews the parent, and if the parent says the child can come home, the child does not qualify for benefits. Unfortunately, the child may feel the situation at home is untenable and be unwilling to go back. Home may not be a safe place. Further, it can take three to five weeks for the benefits to actually reach the youth in need.²⁹² YCD stated that CYFS says there are adequate emergency services for young people, but YCD has not found that to be the case.²⁹³ In referring the Prostitution Reform Bill to the Justice and Electoral Committee, the Committee noted that further work needs to be done to determine how agencies can help youth in the 16 to 18 age group.²⁹⁴ Specifically, the Committee suggested reviewing the eligibility criteria for independent youth benefits. This recommendation continued to be made during the debate on the PRA. Member of Parliament Sue Bradford noted that the issues of benefits for young people aged 16 and 17 needed to be addressed by the Government.²⁹⁵ She stressed that the Government needed to make sure that youth in this age group had “fully paid work

²⁸⁷ Id.

²⁸⁸ Interview with Anni Watkin, Manager, Youth and Cultural Development (Christchurch, April 2006; Wellington, June 2006)

²⁸⁹ Id.

²⁹⁰ Christchurch City Council, “Street Youth Work Project” (1 June 2006) *Scoop, Independent News*,

²⁹¹ Watkin Interview

²⁹² Id.

²⁹³ Id. Ms. Watkin stated that CYFS is presently evaluating the application process and that she hopes the speed of delivery of emergency monies will improve.

²⁹⁴ Prostitution Reform Bill, as reported from the Justice and Electoral Committee, p. 24-25

²⁹⁵ Sue Bradford, MP, 588 New Zealand Parliamentary Debate 6431 (8 November 2000)

and/or access to education and training, and the means to live.”²⁹⁶

198 Youth Health Centre is a community-based agency in Christchurch that provides health care services for people aged 10 to 25. The organisation used to run the Street Worker Service, which has morphed into the Street Youth Project, now run by YCD. 198 Youth Health Centre made comments to the Select Committee on the Prostitution Reform Bill in 2001, noting that there needed to be changes to benefit access and entitlements for young people, which might in turn reduce the need for young people to be involved in sex work.²⁹⁷ This inability to access Department of Work and Income benefits may lead to “survival sex” for such things as housing, food and clothing. Specifically, 198 Youth Health Centre recommends “changes to the criteria regarding eligibility for the Independent Youth Benefit for 16 and 17 year olds, e.g. instead of “serious breakdown” between a young person and their family, redefine as “inadequate support” so that young people in genuine need have greater access to income.”²⁹⁸ They also suggested reducing the time for those under 18 between applying for the benefit and receiving the payment as the need is often immediate and crucial to their safety and well-being. 198 Youth Health Centre also discussed the need for more residential care where a variety of issues can be treated including sexual abuse, drug and alcohol problems, and mental health issues such as depression and anxiety. All of these proposals are the next steps in battling under-age prostitution, and the New Zealand government should be encouraged to continue to enhance and improve these programmes and outreach in an effort to protect those under 18 from commercial sex work.

E. Eliminate Demand: Target the Offenders

Women and children would not be trafficked if the demand for sexual services did not exist. Denise Ritchie of Stop Demand Foundation (Stop Demand), believes greater emphasis should be placed on the men cruising the streets for under-age sex, particularly in areas within Auckland and Christchurch that are renowned for an under-age sex trade, such as K Road in Auckland and Hunter’s Corner in Manukau. Addressing such men by the nomenclature of “offenders” rather than customers, is a first step in recognising that those who hire children under 18 for commercial sex are breaking the law.²⁹⁹ Stop Demand believes that strategies to reduce the trade must include targeting the men who are committing offences. Ritchie points to overseas studies where the most effective measures to deter future prostitute using behavior, as identified by prostitute users, were exposure to spouse or partner and to the public.³⁰⁰ Stop Demand believes that even a small number of prosecutions involving public exposure, together with sentences of imprisonment, would act as a significant deterrent to future under-age prostitute use. YCD also called for more focus on the offenders who are hiring under-age youth. A recent police operation in Christchurch in response to sex industry groups calling for action to be taken against the men hiring the under-age girls did not result in a single arrest for soliciting sexual

²⁹⁶ Id.

²⁹⁷ 198 Youth Health Centre, Prostitution Reform Bill Submission, 31W, p. 2

²⁹⁸ Id., at p. 7

²⁹⁹ Interview with Denise Ritchie, Stop Demand (Auckland, April 2006)

³⁰⁰ Id.

services from young children.³⁰¹ Police have returned five under-age youth, two aged 17, one 16, and two 15, involved in sex work to their parents or guardians in the past five months.³⁰²

³⁰¹ “Under-age operation misses customers” (3 July 2006) *The Press*, Christchurch

³⁰² Id.

6. FUTURE CHALLENGES FOR NEW ZEALAND IN COMBATING UNDER-AGE COMMERCIAL SEXUAL EXPLOITATION

Even without the label of internal trafficking, under-age prostitution is a problem that needs to be addressed. The extent of the problem needs to be determined so that at-risk youth who are engaged in commercial sexual activity can be helped with additional resources on both the social services, preventative side, and the law enforcement, prosecution side of the equation. Issues of gang involvement in the sex industry, the police power to search and monitor brothels, and police's ability to identify under-age workers were all raised during debate of the PRA, and may stand in the way of the protection of under-age youth and trafficking victims, the prevention of crime, and the prosecution of the offenders. The concern in New Zealand is whether gangs are involved in the sex industry and in people trafficking. Prior to the passage of the PRA the Government noted, that "organised crime groups and Outlaw Motorcycle Gangs especially, are involved in many aspects of the indoor sex industry in this country."³⁰³ New Zealand Police feel they are unable to monitor the sex industry as well as they could prior to the PRA, since they can no longer enter brothels without a warrant. The Government recognised prior to the passage of the bill that "to effectively address issues of crime, police need a power of entry."³⁰⁴ Since the passage of the law, there has been a call to prosecute more offenders, those who would hire and engage in sex with under-age persons. The scope of underage involvement in commercial sex work and the impediments to reducing it, such as gang involvement, limitation of police power to enter brothels, and lack of enforcement against offenders, will be briefly addressed below.³⁰⁵

A. Sexual Exploitation of People Under 18

1. What is the Extent of the Problem? Trying to Determine How Many At-Risk Youth are Engaged in Providing Commercial Sex

The Prostitution Law Review Committee will soon begin the task of reviewing the operation of the PRA, including re-assessing the number of under-age youth engaged in providing commercial sexual services and the "nature and adequacy of the means available to assist persons to avoid or cease working as sex workers."³⁰⁶ Numbers are extremely difficult to calculate particularly with respect to street workers who may be transient, but clearly there is an under-age prostitution problem in New Zealand. Providing numbers may be helpful in garnering more resources to address the

³⁰³ Prostitution Reform Bill, Briefing Paper for Justice and Electoral Select Committee 8 (PRB/WJPH/1)(hereinafter Briefing Paper)

³⁰⁴ Briefing Paper, p. 12. "Without a power of entry, the police will be significantly hampered in their ability to detect youth prostitution and other extreme forms of exploitation in brothels. It is noted that a power of entry will only apply if there is some form of licensing requirement for persons who manage and own brothels." Ministry of Justice, Ministry of Health, New Zealand Police, Prostitution Reform Bill, Departmental Report, para. 152. (September 2001)

³⁰⁵ These areas require further study and analysis beyond the scope of this report.

³⁰⁶ PRA, s 42(b). The Prostitution Law Review Committee assessed the number of sex workers prior to the PRA in its report, *The Nature and Extent of the Sex Industry in New Zealand: An Estimation* (April 2005).

problem of those youth under the age of 18 engaging in commercial sex. Thus, a wide range of numbers is included below with the goal of increasing resources to fight under-age prostitution. These numbers, from various sources, may conflict with each other as there is no way for an accurate determination to be made. The source of the numbers is identified to enable readers to view the figures with the knowledge of which organisation has provided them. The numbers, stemming from the series of interviews conducted for this report, are anecdotal. These numbers are not an exact count of under-age prostitutes as such a calculation is impossible to make.

The NZPC in Christchurch noticed a problem with under-age workers seven to eight years ago, before passage of the PRA.³⁰⁷ From January to March of this year NZPC Christchurch, noted no young people under 14 engaged in sex work, but, on average, between two and three youth under 18 years old were out each night engaged in commercial sex.³⁰⁸ If the Collective saw one young person engaged in commercial sex and two friends under 18 hanging out with her, they would count those two as “at-risk” but not as sex workers. On the street in Christchurch in April 2006, one could see street workers and, potentially, one or two girls under age 18 who were engaged in commercial sex.³⁰⁹ Bob Millar, Director of the Salvation Army outreach service in Christchurch noted that there are “half as many prostitutes on the street as nine years ago when the outreach programme started.”³¹⁰ The Salvation Army figure does not distinguish by age, but Millar noted that during the school holidays there were more under-age girls engaged in commercial sex on the street.³¹¹

The Street Youth Work Project counts “contacts” not individuals, so that a young person may be counted more than once if they are seen engaged in commercial sexual activity on more than one night. With this in mind, the Project reported 538 contacts with young people on the street over a 12 month period.³¹² Of the 538 contacts, only five were under the age of 14; 46 contacts were aged between 14 and 15; 143 contacts were aged 16; and 330 contacts were aged 17.³¹³ In a study of Christchurch sex workers in 1999, 31 percent of sex workers reported being under the age of 18 when they started commercial sex work.³¹⁴ In an earlier study of prostitutes in New Zealand, there was a correlation between sexual and other abuse on young girls and women and their later entry into prostitution.³¹⁵

Police in Auckland and Christchurch believe that the number of street workers has increased since the passage of the PRA and that there are more under-age girls involved.³¹⁶ NZPC finds that the numbers of sex workers in Wellington has stayed

³⁰⁷ Interview with Anna Reed, New Zealand Prostitutes Collective (Auckland, April 2006)

³⁰⁸ Reed interview

³⁰⁹ Interview with Bob Millar, Director, Salvation Army Street Outreach Service, (Christchurch, April 2006)

³¹⁰ Millar Interview

³¹¹ *Id.*

³¹² Christchurch City Council Press Release, “Street Youth Work Project” (June 2006), *Scoop, Independent News*

³¹³ *Id.* These numbers refer to girls under the age of 18 years. The reader should keep in mind that five contacts under the age of 14 could all be with the same individual. There were also 14 contacts with young men aged 16 and 17.

³¹⁴ Ministry of Justice, Prostitution Reform Bill – Supplementary Briefing Paper for Justice and Electoral Select Committee, 7 (June 2001)

³¹⁵ Jordan J, *Working Girls: Women in the New Zealand sex industry talk to Jan Jordan* (1991)

³¹⁶ Legat Interview; Chao Interview; Korcia Interview

about the same since the law was passed, but that numbers have gone up in Christchurch.³¹⁷ Both Auckland and Christchurch have an active street scene for prostitution. Wellington's younger street workers are predominantly gay and transgender.³¹⁸ Maori sex workers are over-represented on the street in terms of their percentage of all sex workers.³¹⁹ For example in a recent study in Christchurch, 56 percent of sex workers under the age of 18 were Maori, 44.5 percent Pakeha and 1.5 per cent Pasifika. These figures are for a city whose Maori population is only 13 per cent.³²⁰

In the TV3 programme "Stake Out," a 16 year old youth engaged in commercial sex work stated she had been on the street for about a year and was charging \$40 for sex.³²¹ The PRA, the programme contended, pushed girls under 18 out onto the streets because brothels would not hire them. On the street these younger girls risk being beaten up by older workers in disputes over territory. One girl told the programme she was 14 and had been prostituting on the street since she was 12 and had been raped on the streets.³²² Thus, the show posited, the decriminalisation of prostitution pushed younger girls into more dangerous places. NZPC concurred that youth are forced to work in more transient areas, such as streets off Karangahape Road in Auckland.³²³

2. At-Risk Youth – Services Are Needed to Assist them in Leaving Commercial Sex Work

NZPC-Wellington states that no one is forcing under-age workers into prostitution.³²⁴ The question of force certainly comes into play under New Zealand law as no one can induce or compel another person to provide commercial sexual services by threat, regardless of their age.³²⁵ Coercion and deception are also legal issues in trafficking cases involving those brought into New Zealand from some other country and employed in the commercial sex industry.³²⁶ The law further criminalises commercial sex with an under-age person.³²⁷ The question of force versus choice has both legal and societal ramifications. While some threats and the use of physical force are easier to discern, other threats and coercive behavior may be more nuanced and depend on the context of age and/or migrant status.

The difficulty of life for a young person under 18 who has left home may leave engaging in commercial sex work as the only option for survival. There are perception problems, which those in law enforcement have when they encounter

³¹⁷ Healy Interview

³¹⁸ Id.

³¹⁹ Id.

³²⁰ Christchurch City Council Press Release, "Street Youth Work Project" (June 2006), *Scoop, Independent News*

³²¹ TV3 "Stake Out" (June 23, 2005)

³²² Id.

³²³ Pickering and Dickie Interview, NZPC

³²⁴ Healy interview. The question of choice within the context of prostitution raises many competing views. See Freeman J, *The Feminist Debate over Prostitution Law Reform: Prostitutes' rights groups, radical feminists and the (Im)possibility of Consent* (1989/90) Berkeley Women's Law Journal, 85-94

³²⁵ PRA, s 16

³²⁶ Crimes Act, s 98D

³²⁷ PRA, s 20-23

someone 16 or 17 years old engaged in commercial sex work. Under the PRA no one under the age of 18 years can be prosecuted for seeking to engage in commercial sex.³²⁸ Thus, the law implicitly supports the view that those under 18 are victims and should not be prosecuted. New Zealand law, in other situations, treats 16 and 17 year olds more like adults. For example there are Child, Youth, and Family Services interventions which only apply to those under the age of 16.³²⁹ New Zealand lawmakers who want to combat under-age prostitution, need to provide more social services to those at risk, including those who are 16 and 17 years old who presently find it very difficult to obtain Independent Youth Benefits.

Prior to the passage of the PRA, the Office of the Commissioner for Children met with a group of sex workers who were under 18 to ascertain their reactions to the Prostitution Reform Bill and how it would affect them. The Commissioner reported to the Select Committee that all of the youth said they would continue to undertake sex work, “as there did not seem to be a lot of other options.”³³⁰ The young people cited poverty, housing, homelessness, abuse, and drug and alcohol dependency as the issues that kept them in sex work.³³¹ The Commissioner also feared that young people engaged in commercial sex would be driven further underground due to the need for secrecy, and that they would, therefore, be less visible and potentially in more dangerous situations. This latter concern does not appear to have materialised, as outreach workers can still get information on health and safety to under-age workers.³³²

B. Gang Involvement

Organised crime may be attracted to people trafficking for the profits it can generate. “According to the U.S. Federal Bureau of Investigation, human trafficking generates an estimated \$9.5 billion in annual revenue. It is closely connected with money laundering, drug trafficking, document forgery and human smuggling.”³³³ While many argued that decriminalisation of prostitution in New Zealand would lead to increased gang involvement, the facts on this issue are hard to discern and may vary by community. The Chairperson of the Prostitution Law Review Committee, Paul Fitzharris, thought that the role of gang involvement was overblown by the media and certain lobby groups.³³⁴ However, when the media does raise community interest in these crimes, police resources are redirected to them. For example, after the media wrote stories about the Mongrel Mob in Christchurch running under-age and other prostitutes, the police increased their uniform presence on the street. Raising the public’s awareness of a problem does mean it is more likely to be addressed.

The Police in Christchurch responded to the stories that gangs might be moving into the role of “minders” of some of the sex workers on the street. These minders take

³²⁸ PRA, s 23(3). “No person under 18 years of age may be charged as a party to an offence committed on or with that person against this section.”

³²⁹ Interview with Anni Watkin, Manager, Youth & Cultural Development (Christchurch April 2006)

³³⁰ Office of the Commissioner of Children, Submission on the Prostitution Reform Bill, 4 (March 2001)

³³¹ *Id.*

³³² Watkin Interview

³³³ U.S. State Department, Trafficking in Persons Report, 2006, p. 13

³³⁴ Fitzharris Interview

down license plate numbers and look out for the workers while they are on the street. However, when the Christchurch Police targeted these minders and conducted a visible operation for approximately three months, they found the minders were most often boyfriends.³³⁵ The Mongrel Mob may have been targeting street prostitution as a new venture in Christchurch, but the police were able to arrest mob members for minor offences, essentially harassing them enough in this focused time period, so that the Mob never got a foothold. Further, the street workers themselves did not want the Mob there, as they were basically trying to tax the workers for purported protection.³³⁶

One massage parlour owner, who submitted comments on the Prostitution Reform Bill, felt there was a risk of gang interference in and influence on brothels, and went on to discuss an unsuccessful attempt by organised crime to take over his massage parlour. The submitter also mentioned a strong gang influence over young women working on the street in Christchurch.³³⁷ Police stated prior to the passage of the PRA, that organised crime was moving to expand its involvement in the sex industry.³³⁸

“Street prostitution in New Zealand is not characterised by women controlled by the ‘gun-toting pimp’ that is prevalent in some other countries’ street prostitution, in particular the United States. However, there are some women who are prostituted by gangs, who are under their control.”³³⁹ The Outlaw Motorcycle Gang (OMCG) was recognised by the Police in 2001 as being involved in the sex industry both by directly owning and operating brothels, and indirectly via personal and business associations with sex workers.³⁴⁰ Maori and white-power gangs can be involved in the street sector, controlling younger workers for the financial rewards reaped from higher customer demand for the services of underage prostitutes.³⁴¹ The law against participating in an organised criminal group provides that all members of a gang may be prosecuted if any one member of that gang is compelling someone into prostitution or assisting someone under 18 in commercial sexual services, or receiving that person’s earnings.³⁴² Further, the standard for participation in a gang is low, the individual need only be “reckless” as to “whether his or her participation *may* contribute to the occurrence of criminal activity.”³⁴³

C. Police Power of Entry and Search

The occurrence of at-risk youth engaging in commercial sex will rarely be reported to police, as neither party wants to be discovered. Police in Wellington and Christchurch

³³⁵ Interview with Superintendent Sandra Manderson, District Commander Canterbury, New Zealand Police; Peter Read, Detective Inspector, New Zealand Police; Gary Knowles, Inspector, New Zealand Police; and Todd Hamilton, Detective, New Zealand Police (Christchurch April 2006)

³³⁶ *Id.*

³³⁷ Thomas, Dewar, Sziranyi, Druce, Submission to the Justice and Electoral Committee on the Prostitution Reform Bill, 2 (16 February 2001) 132W at 3

³³⁸ New Zealand Police, *The Vice Scene In New Zealand*, p. 3 (June 2001)

³³⁹ Ministry of Justice, *Prostitution Reform Bill - Supplementary Briefing Paper*, at p. 12

³⁴⁰ *Vice Scene in New Zealand*, p. 45-47

³⁴¹ *Id.* at p. 59

³⁴² Crimes Act, s 98A(3)

³⁴³ Crimes Act, s 98A(1), (emphasis added)

feel that their ability to go into brothels has been hindered under the PRA.³⁴⁴ Police view the PRA as cutting off their access to brothels and breaking the lines of communication they used to have to find out about underage workers and other abuses. While police do have the power, as with any crime, to apply for a search warrant there are some differences in search warrants sought under the PRA and those sought under the general Summary Proceedings Act (SPA) for other crimes.³⁴⁵ Under the PRA the standard is “good cause to suspect that an offence . . . is being, has been, or is likely to be committed.”³⁴⁶ Under the Summary Proceedings Act (SPA), the standard is “reasonable ground for believing” and extends to looking for “evidence as to the commission of” an offence and “any thing which there is reasonable ground to believe is intended to be used for the purpose of committing” an offence.³⁴⁷ Thus, under the SPA, police can look for evidence of the crime and implements used to commit it. Under the PRA the standard of “good cause to suspect” an offence is lower than the standard of “reasonable grounds for believing” used for general crimes. However, police can only employ this lower standard and seek a warrant to enter if they specify that one of two crimes is being, has been, or is likely to be committed: (1) someone under 18 is engaged in prostitution, or (2) an operator does not have a certificate.³⁴⁸

The legal standards for obtaining search warrants of brothels change depending on the crime being investigated. While the PRA makes it a crime to induce or compel a person to enter prostitution by threatening them, police cannot obtain a warrant under the PRA for this crime; it is not one of the grounds listed in the Act.³⁴⁹ Thus, the crime of forced prostitution punishable by up to 14 years imprisonment, cannot be investigated via a search warrant under the PRA.³⁵⁰ Of course, police can obtain a search warrant under the Summary Proceedings Act to search for evidence of all crimes, although the standard for obtaining the warrant is higher.³⁵¹ The Immigration Act also allows police to enter without a warrant if they are “undertaking immigration duties,” and “believe on reasonable ground that it is necessary for the purpose of detecting any offence” under the Immigration Act.³⁵² Thus, police could enter a brothel without a warrant, *if* they have reasonable grounds to believe that migrant workers are working there illegally.

Prior to the PRA police could go into licensed massage parlours to see if they were complying with the license; no search warrant was needed. The Bill as passed did contain a licensing provision but not a power of entry for police to inspect that license. The only people allowed to inspect brothels now are medical officers of health or their appointees who are to inspect for compliance with health and safety requirements.³⁵³ To obtain warrants to investigate other criminal activity, police obtain a warrant under the SPA.³⁵⁴ For these other crimes the warrant provisions

³⁴⁴ Hamilton Interview; Cotter Interview

³⁴⁵ Compare Summary Proceedings Act (SPA) 1957, s 198 and PRA, s 30

³⁴⁶ PRA, s 30(a)

³⁴⁷ Summary Proceedings Act 1957, s. 198

³⁴⁸ PRA, s 30

³⁴⁹ PRA, s 16 and s 30

³⁵⁰ PRA, s 16(2)(c) and 16(3) and s 30

³⁵¹ SPA, s 198

³⁵² Immigration Act, 1987, s 137(2)

³⁵³ PRA, s 24-26

³⁵⁴ SPA, s 198

allow a longer time to conduct the search, 30 days, instead of 14 days under the PRA.³⁵⁵ Rather than the current regime, which is somewhat convoluted depending on the crime being investigated, Police need similar powers to the ones they have under other legislation with licensing provisions. For example under the Sale of Liquor Act, and Second Hand Dealers and Pawn Brokers Act, Police can enter and inspect licensed premises to be sure they are complying with the provisions of the acts.³⁵⁶

One massage parlour owner who had been in the industry since 1989, submitted comments on the Prostitution Reform Bill to the select committee calling for establishments with more than three sex workers to be licensed, and for police to keep a register and maintain liaisons with the parlours. The submitter felt that this would “act as a screen to prevent the involvement of criminals in the running of parlours and also help to eliminate drugs from them.”³⁵⁷ The submitter, speaking from his experience in the industry, thought regulations and licenses would better protect sex workers. Presently the PRA allows police to require a person who is an operator of a brothel to produce that person’s certificate for inspection.³⁵⁸ However, the operator has 24 hours to produce said certificate and can bring it down to the local police station, rather than have police enter the brothel to obtain the certificate. Failure to produce the certificate results in a fine, not exceeding \$2,000.³⁵⁹

The primary reason for changing the law to allow police access to brothels to inspect licenses is to find out if anyone under 18 is working there or if any immigrants are working there illegally. Other benefits would include opening the lines of communication, which can assist police in other criminal investigations and in the enforcement of the law in general. Specifically, police would be in a better position to address and discover potential exploitation or abuse of sex workers, in particular foreign workers who may be uniquely vulnerable to exploitation via debt bondage and threats of being deported. The NZPC does not believe police should be allowed to enter brothels, as it would lead to the monitoring of sex workers. While the NZPC may know about working conditions at many brothels via the workers, at least one brothel in Auckland does not allow the NZPC to talk to its workers.³⁶⁰ Further, if crimes are occurring at brothels, workers are unlikely to tell NZPC, which has no authority to investigate.

Court records concerning the identity of applicants for certificates and for certificate holders can only be accessed by the police “for the purpose of investigating an offence.”³⁶¹ This proviso has not been tested by the courts but, hopefully, will be interpreted broadly if the police are to have any ability to conduct investigations. The import of the PRA however, is that police have less ability to interact with brothel workers and owners, and to know what is going on at brothels. In an effort to de-stigmatise the sex industry and ensure its workers have basic rights, the PRA has

³⁵⁵ Cf. PRA, s 31(1)(c) and SPA, s 198(3)

³⁵⁶ Sale of Liquor Act 1989, s 175; Secondhand Dealers Act 1963, s 16

³⁵⁷ Thomas, Dewar, Sziranyi, Druce, Submission to the Justice and Electoral Committee on the Prostitution Reform Bill, 2 (16 February 2001) 132W

³⁵⁸ PRA, s 40

³⁵⁹ Id.

³⁶⁰ Dickie and Pickering Interviews

³⁶¹ PRA, s 41(1)(c)

hampered police unnecessarily.³⁶² Treating brothels like other businesses whose licenses are open to inspection at any time would not curtail workers rights and, in fact, should improve police's ability to detect crimes at brothels. The Prostitution Law Review Committee is tasked with considering whether any amendments should be made to the PRA and reporting on their review by June 2008.³⁶³ Certainly, the Committee should consider a licensing regime under which Police can go into brothels to inspect operator certificates

D. Enforcing the Law Against Offenders: Are Licenses or Identification Checks Needed?

NGOs want more effort from Police and the Government to protect underage youth and children from ending up engaging in commercial sex work. The call for action is on two fronts: 1) Enforce the PRA against offenders who hire at-risk youth engaged in commercial sex work; and/or 2) Pick-up underage youth from the streets and provide appropriate services to keep them from engaging in commercial sex work. In addition to the NGOs already discussed, ECPAT also calls for more police oversight in the decriminalised prostitution industry to keep underage youth from engaging in commercial sex.³⁶⁴ Cases brought against offenders hiring underage children are rare, a fact borne out by the number and type of cases discussed above.³⁶⁵ Although it is not a crime for at-risk youth to solicit or provide commercial sexual services, many do not want to cooperate with police in prosecuting the offenders, as this is the way they are earning money and surviving. There is also the fear that targeting the offenders seeking under-age youth may result in at-risk youth moving to a new location in a more hidden and less secure location. For a prosecution to succeed, police either need a cooperative witness, the underage youth who engaged in sex work, or need to document the contract for sex between the youth and the offender. Proving this contract may be difficult without a witness. Research has not revealed any cases in which police have refused to prosecute an offender when the underage youth was willing to testify. In many cases, police even began the prosecution without knowing if they would have a willing witness.

TV 3 programme "Stake Out" did a story on teenage prostitution in June of 2005, where the television crew had women posing as underage girls.³⁶⁶ There is a large volume of traffic around Hunter's Corner and Manurewa with people cruising for sex workers.³⁶⁷ The "young worker" would tell prospective customers she was 16 and then ask if the customer had a problem with that. None of the customers drove away when told the age of the prostitute they were trying to hire, and at that point would have become offenders under the PRA if the prostitute was in fact under 18 years of age. The television crew then approached the offender and asked him why he was willing to hire an underage girl, as that was against the law. At this point some offenders drove away; some said they did not know it was against the law; and one

³⁶² Another factor for the law reform was the potential for police corruption in the old system. Interview with Tim Barnett, Member of Parliament (Wellington, June 2006)

³⁶³ PRA, s 42(b)(iv)

³⁶⁴ Interview with Jane Foster, ECPAT, New Zealand, (Auckland, April 2006)

³⁶⁵ Interview with Ken Leggett, New Zealand Police (May 2006)

³⁶⁶ TV3 "Stake Out" (June 23, 2005)

³⁶⁷ Walker and Savil Interview

stated “this is normal; this is Auckland” as if the laws against hiring underage girls did not apply.³⁶⁸ Further, while conducting their filming, the television crew was asked by police what they were doing out there, and told that police had gotten complaints about them being on the street with the camera. Ironically, police were questioning the cameraman rather than the offenders in cars who were trying to hire underage girls. No offenders have been prosecuted in Auckland for contracting with a person under 18 for commercial sexual services.

Police need the support of Government in terms of resources and prioritisation if they are going to prosecute offenders seeking underage individuals engaged in commercial sex. First, more police could be added to the street to record license plates of those offenders seeking underage youth. This activity would most likely need to be done surreptitiously, so at-risk youth will not simply relocate.³⁶⁹ Police can then run plates to identify the offender. Police could start with cases that involve those offenders who are most frequently observed hiring underage individuals. Police would need to determine whether they arrest an offender if the victim is unwilling to testify. The reality is that an unwilling witness may simply not be around at the time of trial. Do police then need to wait and allow a commercial sex act to occur so they can catch an offender? The PRA requires that a contract or other arrangement be entered into, so the police do not have to wait for a sex act to occur. Second, police could place undercover officers on the street posing as under-age youth willing to engage in commercial sex. However if police pursue this option, will the court sentences include jail time? In this second scenario, with undercover cops posing as underage or as mothers offering underage girls, judges have not been sentencing the offender to jail time.³⁷⁰ It is difficult to ask police to use their scarce resources to bring these cases, when the offenders are only fined and not imprisoned.

Representatives of the Human Rights Commission (HRC) spoke to the Select Committee hearing of the Manukau City Council (Control of Prostitution) Bill to restrict street soliciting in certain areas of their county, particularly Hunters Corner.³⁷¹ The HRC suggested requiring proof of an individual’s age if they are out soliciting on the street. This requirement, they contend, would allow police to ask an individual who looked young to establish her age and give Police a reason to interact with those at risk and ascertain whether they should attempt to find them help with CYFS or other organisations. Mama Tere argues that commercial sex workers should have to obtain certificates, similar to hairdressers and cosmetologists.³⁷² She queried why buskers need licenses and street workers do not? However, NZPC and Anni Watkin

³⁶⁸ TV3 “Stake Out” (June 23, 2005)

³⁶⁹ NZPC in Christchurch noted that after a crackdown on under-age youth engaged in commercial sex work, many simply changed their locations, with some even going to Wellington. Reed Interview

³⁷⁰ See *R v Pahl*, supra, Chapter 3; *Police v M (Name Suppressed Defendant)*, DC (Christchurch) 1009023650/02 (hereinafter NS-2). The latter case is distinct from the on-going one discussed supra Chapter 3, and was prosecuted under the Crimes Act prior to the passage of the PRA. Defendant NS-2 had arranged with an undercover mother to have sex with her 12 year old daughter. The defendant received a \$2,500 fine, court costs of \$130, and 12 months supervision with the condition that he undertake counseling and complete the STOP programme. Another case brought in Palmerston North under the PRA in which a police officer posed as a 14 year old willing to engage in commercial sex, resulted in a sentence of a \$750 fine and Court costs of \$130. See footnote 180.

³⁷¹ Rosslyn Noonan, Chief Commissioner and Joy Liddicoat, Commissioner, Human Rights Commission, Oral Submission to Select Committee (Wellington, May 2006)

³⁷² Mama Tere Interview

of YCD do not believe asking for identification will help. At-risk youth may not have good relationships with police as their past experience has been with police arresting them, putting them in foster care, or returning them to a family situation that was unacceptable to the youth.³⁷³ As there is often nowhere for police to take under-age youth engaged in commercial sex, there is little point in asking for identification or a license. A preferred option is for the outreach groups and NGOs to continue to make contacts with at-risk youth and report those who are underage and engaged in commercial sex to police. For example, in Christchurch if the Salvation Army outreach van notices at-risk youth they will tell police. Police could then monitor the customers of this underage person without scaring the youth away through official contact. The debate on the efficacy of licensing and identification checks is unresolved. However, the Government should set enforcement as a priority and fund police efforts to investigate and prosecute crimes under the PRA by targeting offenders who hire underage youth for commercial sex. Before a licensing or a certification regime is tried as a tool to reduce the number of underage youth engaged in commercial sex, prosecuting offenders should occur. By focusing on this criminal conduct on the demand side, the supply of youth engaging in commercial sex may decrease.

³⁷³ Watkin Interview

7. PEOPLE TRAFFICKING SCENARIOS IN NEW ZEALAND

There have been no prosecutions of people trafficking since the June 2002 amendments to the Crimes Act, which added smuggling and trafficking offenses under sections 98C and 98D. The lack of prosecutions, however, does not mean that people trafficking has not occurred. The case studies discussed below occurred prior to the June 2002 amendment, and illustrate the types of people trafficking cases in New Zealand. The case studies are also examples for law enforcement as to what types of fact patterns constitute people trafficking.

A. Thai women and the Pink Sticker Campaign

In 1999-2000 there was a well publicised case of Thai women being brought in and held against their will in brothels in Auckland.³⁷⁴ Media focused attention on the international Asian sex trade in Auckland leading to a response from then Mayor of Auckland, Christine Fletcher. The Mayor initiated meetings with a multi-agency group, from which the Human Rights Commission launched a “Pink Sticker Campaign” to publicise in Thai and in English on bright pink stickers a safe house and repatriation programme for women being forced to work against their will.³⁷⁵ The Human Rights Commission also received calls from doctors who informed HRC that they were seeing Thai women who had suffered from sexual violence.³⁷⁶ This time period was prior to the passage of the PRA, so soliciting for prostitution would have been illegal. The Human Rights Commission and Immigration New Zealand had safe houses and a fast-track repatriation programme with travel documents and airfare.³⁷⁷ Thus, many of the victims may have returned to Thailand before their traffickers could be criminally prosecuted. One woman did pursue a civil action through the New Zealand Disputes Tribunal and was awarded the \$6,000 she had paid to her traffickers for work in a restaurant in New Zealand.³⁷⁸ This case was the first civil claim made in New Zealand to retrieve money from traffickers who cheated a victim.³⁷⁹ No criminal charges were ever filed in any of the six cases where Thai women had been forced into the New Zealand sex industry. Police in Auckland feel that foreign organised crime interests may still be involved in brothels and in finding women for the sex industry.³⁸⁰

³⁷⁴ While this case is older, it can still be instructive. The occurrence of Asian women working in the New Zealand sex industry was noted as early as 1993. Checks by Auckland police that year detected more than 65 Thai women working as prostitutes in just five inner city massage parlours. New Zealand Police, *The Vice Scene in New Zealand*, p. 35. All of the women were in breach of their immigration status. There were also reports of Asian women working in Wellington and Christchurch, although in much smaller numbers.

³⁷⁵ This multi-agency group included representatives from Auckland Police District, Human Rights Commission, Immigration, ECPAT New Zealand, Shakti Asian Women’s Support Group, NZPC, Saftinet, Auckland Sexual Health clinic, Safer Auckland City, Ministry of Women’s Affairs and Asian representatives. Interview with Sam McLean, Human Rights Commission (Auckland, April 2006)

³⁷⁶ McLean Interview

³⁷⁷ McLean Interview

³⁷⁸ “Money returned in sex trafficking case,” *Tirohia*, Quarterly Newsletter of the New Zealand Human Rights Commission (April 2001)

³⁷⁹ *Id.*

³⁸⁰ Koria Interview; Chao Interview

In addition to there being no criminal prosecution in the 1999 case, there have been no prosecutions since that incident.³⁸¹ It seems implausible that there are simply no cases.³⁸² Law enforcement at all levels needs to recognise that Police or Immigration may not be a choice for help for trafficking victims who may feel threatened with deportation, confined by their traffickers, hindered by a language barrier, or be afraid of law enforcement due to their interactions with potentially corrupt law enforcement in their own country. In fact, at roughly the same time as the Pink Sticker campaign, Police also ran an operation in mid-1999 in Auckland to see if there were trafficked workers.³⁸³ Police claimed there were *no* actual trafficked workers. The results from the Police operation may be due to the fact that victims are not going to identify themselves to law enforcement. Another explanation, according to a police report in 2001, is that “70% of all Thai sex workers in the Auckland sex industry arrive in this country aware they are expected to work as prostitutes with up to 60% of all workers already experienced as prostitutes in their country of origin.”³⁸⁴ Even when this study was done, that still left 30 percent of Thai women who ended up working in the sex industry unaware that this was the job waiting for them in New Zealand. These women could be victims of trafficking.

B. Restaurant to Brothel: Debt Bonded into Sex Work

In 2001 a woman left a home in which she had been living in Auckland, and reported to the border investigation group of the Department of Immigration.³⁸⁵ The woman related that she and other Thai women had been told that for NZ\$10,000 they could get a job at a restaurant in Auckland.³⁸⁶ These women owed the recruiting agent in Thailand an interest rate of 36 percent and had agreed to make this payment. However, when they were picked up at the airport their money, return tickets, and passports were taken from them. They were taken to live in a house with 14 other Thai women, slept six to a room, and to their “tab” was added \$150 a week in rent, even though rent on the whole house was only \$450 a week. Every day at 1 p.m. the girls were picked up and taken to a brothel. Every night they were picked up at the brothel at 3 a.m. and brought back to the house, with all the money they had earned that night taken from them to repay their debt.³⁸⁷ Immigration obtained a warrant for the home and Police accompanied them on the execution of the warrant. The women were moved from the search location within a week. No case was ever brought

³⁸¹ All Thai nationals had their visa free status into New Zealand removed in late 2000. Thai nationals must now make an application at a New Zealand Embassy and obtain a permit prior to travel. Prior to the passage of the PRA the trend among Thai sex workers was to enter New Zealand under student entry permits which are valid for four years as long as the student is enrolled in school. New Zealand Police, *Vice Scene in New Zealand*, p. 41-42

³⁸² It is much more likely that Police and Immigration simply lack the resources to be proactive in their investigations as they have plenty of cases from those victims who seek them out. To conduct these time intensive investigations and ferret out trafficking in New Zealand, Police and Immigration will need more resources.

³⁸³ New Zealand Police, *Vice Scene in New Zealand*, p. 38

³⁸⁴ *Id.*

³⁸⁵ Facts of the case come from an interview with Colin Jessup, Department of Labour (Auckland, May 2006). New Zealand Police also reported that fees in excess of NZ \$10,000 are reported as the norm. *Id.*, p. 36

³⁸⁶ At the time, people from Thailand could still travel to New Zealand without obtaining a visa, and these women came to New Zealand on visitor visas. Baker Comment

³⁸⁷ Jessup Interview and Baker Comment

against anyone as Police indicated without bondage or physical restraints, the women were free to come and go from the home and the brothel.³⁸⁸

With the addition of 98D to the Crimes Act in 2002, this case could today be prosecuted as one of trafficking. The women were clearly brought into New Zealand from another state, Thailand, by an act of deception. New Zealand law on trafficking does not require any additional exploitation once the individuals are brought into the country. By not requiring exploitation of the person once they are in New Zealand, the cases are actually easier to prove.³⁸⁹ Arranging the entry of a person into New Zealand, or harbouring them once they are here, by one or more acts of coercion or deception is people trafficking.³⁹⁰ There was deception in this case as the job promised was not the one delivered. Coercion was present in that the debt made the women feel they had no choice. This type of trafficking case if found today, would be prosecuted in New Zealand under 98D. If the women were told that if they did not work in the sex industry they would be deported, there is also a violation of section 16(2) of the PRA. Lastly, charges could also be brought under section 98 of the Crimes Act as there was debt bondage. Additionally, the Immigration Act has since added a section on exploitation of people not legally entitled to work in New Zealand.³⁹¹ Under this section an employer commits an offense where it exploits an unlawful person.

New Zealand Police recognised in a 2001 vice report that Asian women are often “contracted and financially bonded in various forms to either their employer or the agent or organisation responsible for recruiting them.”³⁹² Further, cases involving debt bondage to employers “and excessive wage reductions are not restricted to the sex industry alone. Similar arrangements are also reported to exist in sweatshops, painting and plastering gangs, and bakeries run by Asians in the Auckland metropolitan area.”³⁹³ One massage parlour owner noted prior to the passage of the PRA that “many young women are brought to New Zealand to work in the sex industry and many are exploited.”³⁹⁴ The owner had even been offered Asian sex slaves. NZPC acknowledged that some Thai women are in the commercial sex industry because they have debts to pay off.³⁹⁵ The NZPC confirmed that Thai women as a group often work too hard and that the debt owed has a connection to the girl’s family back home.³⁹⁶ They have also stated that there are very small numbers of Eastern Europeans and Brazilians beginning to work in the sex industry in New Zealand, but had no evidence of trafficking with respect to these groups.³⁹⁷

Training for Police and Immigration should include indicators of people trafficking,

³⁸⁸ Jessup Interview

³⁸⁹ U.S. law requires more than entry of a person into the country pursuant to coercion or deception for a case to be trafficking in persons. U.S. law also requires exploitation as an element of the crime, such as forcing or defrauding someone into providing commercial sex, labour, or services. 22 U.S.C. 7102.

³⁹⁰ Crimes Act, s 98D

³⁹¹ Immigration Act 1987, s 39A

³⁹² New Zealand Police, Vice Scene in New Zealand, p. 36

³⁹³ *Id.*, at p. 37

³⁹⁴ Thomas, Submission to the Justice and Electoral Committee on the Prostitution Reform Bill, at 3

³⁹⁵ Healy Interview

³⁹⁶ The NZPC believes that immigrant women should be allowed to come to New Zealand and work in brothels legally. Healy Interview

³⁹⁷ Healy Interview

such as the withholding of travel documents, workers not receiving their wages, and unusually high fees leading to debt, and different factual scenarios law enforcement may encounter. One scenario is that of a migrant sex worker who arrives initially with a visitor permit and then simply stays in New Zealand voluntarily. There is no coercion or deception with respect to the entry or the job, so this case is not people trafficking. There may be immigration violations, but some people may simply be following a financial incentive, deciding they can make more money in the commercial sex industry in New Zealand than in Asia. Another scenario is when a woman is deceived into working in the sex trade by being told she has a job in a restaurant or the clothing industry, only to find once she is here that no job exists. Even if this woman came here willingly, using fraudulent travel documents, she was deceived as to the job that awaited her so this scenario is people trafficking. If the woman is in disproportionate debt this may be an indicator of trafficking or debt bondage. If she pays higher than the going rate for air tickets, accommodation, and placement and her travel documents are held until her debt is paid; if the debt has exorbitant interest rates; and if she loses the ability to say “no” to sex work, this is people trafficking and she is a victim. In this last example, there may also be violations under the PRA s 16. New Zealand Police incorrectly stated in their 2001 report that if workers find they need a higher paying job to pay back their “placement fees,” they can choose to become a sex worker to pay off their debt.³⁹⁸ Debt bondage in New Zealand is a crime as well as an indicator of trafficking.³⁹⁹ While police claimed they found no “trafficked” individuals, they did note that Asian prostitutes worked “extremely long hours in substandard conditions with little or no control over their terms of employment.” In many instances it is believed workers passports are held as security, . . . for placement fees incurred during the recruitment process.”⁴⁰⁰ Again, Police have detailed more indicia of trafficking, even recognising that an Asian workers’ immigration status may make her vulnerable to her employers. These indicators need to be evaluated in terms of the PRA and the Crimes Act and more prosecutions should result when facts, such as those discussed above, are present.

C. Sewing Together Limited and Sopana Kirk: Forced Labour

Another case which today would be prosecuted as people trafficking, was handled prior to the passage of 98D as an employment tribunal matter. In this case in 2001 Sopana Kirk and Sewing Together Limited hired 18 Thai women to work as sewing machinists in Auckland.⁴⁰¹ The women were living, working and sleeping at a residential property in New Lynn. “Mrs. Kirk forbade her employees to leave her premises at any time, even in their off hours, without her permission.”⁴⁰² When interviewed by Labour inspectors, the 14 women workers gave conflicting answers to the hours and days they worked and appeared to be afraid. By observing the home inspectors noted over a period of 10 nights that workers left at 10 pm. The time and wage records had the workers finishing at 5 pm each day. One worker later told inspectors that “during a busy period she had worked 26 hours from start to knock-off

³⁹⁸ Id.

³⁹⁹ Crimes Act, 98(2)

⁴⁰⁰ Id.

⁴⁰¹ *Elliott v Kirk and Sewing Together Limited*, ET (Auckland) AT17/01. There are other comparable labour exploitation cases. See *Vevers v Sculpher*, ET (Auckland) AT 105/02

⁴⁰² *Elliott v Kirk*, Id., at p. 4

time.”⁴⁰³ Sewing Together held the workers’ passports. Half of each worker’s wages was taken every week until each worker had paid \$4,000, ostensibly for airfare, when in fact airfare only ran to about \$1,406 or less at that time. “Some of the workers had \$130 deducted from their pay for the use of a washing machine and \$100 for the use of an electric stove.”⁴⁰⁴

Again, this is a clear case of trafficking. At the time, the matter was handled as a penalty action as there was no trafficking law in New Zealand. The employment tribunal ultimately found that the employees were underpaid by a total of \$295,741.19.⁴⁰⁵ The court noted that Kirk had seriously infringed the rights of the employees.

Between 25 June 1995 and 31 March 1999, Mrs. Kirk engaged in a course of conduct to exploit fellow Thai citizens who were attracted by the opportunity to work in New Zealand. Having brought them here, she took the fullest advantage of the leverage she had over them by taking custody of their passports and by the constant threat of dismissal and expulsion from New Zealand hanging over them if any of them disobeyed rules which could be described as medieval. . . . When challenged, she obstructed the inspectors’ investigation and, using all the coercive power available to her, had her employees provide false statements to further obstruct the investigation.⁴⁰⁶

Kirk never served any jail time for this matter. She was adjudicated bankrupt in the High Court.⁴⁰⁷

D. Training Law Enforcement to Recognise People Trafficking Cases

Government and law enforcement need to take proactive steps in identifying trafficking victims. New Zealand needs to train its law enforcement officials, including Police and Immigration officers, in recognising and investigating smuggling and people trafficking cases. While presently there is no specific training in the country on people trafficking, New Zealand is developing a training package as part of the National Plan of Action to Combat Trafficking in Persons.⁴⁰⁸ Indicia of international people trafficking include confiscation of passports, travel documents, and identification by the trafficker. Deceptive hiring practices, employment schemes that promise one job and then provide another, and excessive recruitment fees paid by the employee can all occur in migrant trafficking cases. Signs of trafficking also include living near the workplace, limited mobility, and no control over one’s earnings. Lastly, exorbitant interest rates and a system of owing more money than the

⁴⁰³ *Id.*, at p. 3

⁴⁰⁴ *Id.*, at p. 4

⁴⁰⁵ *Id.*, at p. 5. The employment tribunal also imposed 12 penalties of \$2,000 each, for a total of \$24,000.

⁴⁰⁶ *Id.*, at p. 5-6

⁴⁰⁷ Interview with Richard Henshaw, Regional Solicitor, Immigration (May 2006)

⁴⁰⁸ Interview with Natalie Gardiner, Fraud Branch, Immigration and Andrew Holmes, Branch Manager, Risk Assessment (Wellington, April 2006). Baker Comments

individual can make are frequent tools traffickers use to exert control over their victims.

People arrested for immigration violations should be evaluated to determine if they are victims of people trafficking. Interviews need to be conducted in safe environments with appropriate translators and sensitivity to cultural differences. Once trafficking victims are identified, the victim can hopefully qualify for assistance either through Government support services or from NGO safe houses, counseling services, or other forms of support. Often a victim will need a place to sleep that is not associated with the trafficker and a legitimate way to earn money or be supported. Importantly, victims should not be prosecuted for crimes that are a direct result of their being trafficked. This determination can be difficult in cases where the victims may have willingly used illegal documents to enter the country. However, if after entering the country they are forced into labour or commercial sex against their will, the case has evolved into a people trafficking one and victims will ideally be treated as such, not co-defendants. Victims could be given a choice of voluntary repatriation to their home country, or residency in New Zealand. Victims, who may face reprisals or even violence if they are sent home, should not be forced to leave New Zealand.

In New Zealand, Immigration and Police share the smuggling and trafficking portfolios.⁴⁰⁹ In 2002 an offence of people smuggling was provided under the Immigration Act 1987. In 2002-2003 the Fraud Unit within Immigration New Zealand was created.⁴¹⁰ With this expansion of the law and additional resources, Immigration New Zealand's prosecutions for fraud and people smuggling have increased in the past few years. When an Immigration officer encounters someone with fraudulent documents there may be an inclination to reject that person's entry into New Zealand and send them back from whence they came, rather than prosecute. If a case has the potential to contain the factors outlined by the court in *Markevich* above, the individuals should be detained not removed, and the investigation continued for the person or persons who assisted the individual migrant.

As both Police and Immigration have the ability to prosecute trafficking cases, and both bring different knowledge and legal authority to the case, they should jointly investigate trafficking cases. The decision as to which agency should take the lead will need to be made on the facts of each individual case after determining which agency would be better resourced to deal with the case. In a trafficking case, "Police will require the assistance of Immigration staff to ensure the victim's Immigration status is dealt with in the appropriate manner and Immigration New Zealand would similarly require the New Zealand Police to assist where their powers were limited by statute."⁴¹¹ The responsibility should be joint and it should be delineated in each organisation's portfolio. The Government needs to prioritise people smuggling and trafficking investigations for both Police and Immigration so that cases are a priority, and provide these organisations funding to train their officers and support the investigation and prosecution of these cases. New Zealand would also benefit from a national squad involving Police and Immigration who could be a resource when trafficking cases are brought anywhere in the country. Information needs to flow across these two organisations and down to the area commanders and their

⁴⁰⁹ Baker Comments

⁴¹⁰ Id.

⁴¹¹ Id.

investigative officers.

In addition to training for recognising and prosecuting cases, Police and Immigration should be more aware of the non-governmental organisations (NGOs) performing outreach services to those victims of under-age prostitution and trafficking. These organisations often have good relationships with street workers and migrants who may be more willing to talk to people at the NGO than to law enforcement. The NGOs may also have better access to services, including benefits, medical care, job training, and temporary accommodation.

RECOMMENDATIONS

New Zealand has the laws in place that it needs to combat people trafficking and commercial sexual exploitation of those under 18. Cases are already being successfully brought under the Prostitution Reform Act and the smuggling provision of the Crimes Act. Further, the trafficking (section 98D) and the dealing in slaves (section 98) provisions of the Crimes Act, the latter of which encompasses debt bondage, are available for use in trafficking cases.

The Government needs to identify as a goal and priority for Police and Immigration the combating of transnational people trafficking and smuggling. For Police trafficking goals can be identified with other initiatives such as reducing sexual violence, reducing the role of organised crime, and increasing national security. Similarly for Immigration, trafficking prosecutions can be identified with other goals and initiatives such as protecting the border and protecting workers' rights. Immigration officers need to evaluate those encountered for immigration violations to determine if they are trafficking victims.

Police and Immigration officers need training nationwide in how to identify and investigate trafficking cases. The Government is developing a National Plan of Action to Combat Trafficking in Persons which will include an emphasis on training and enforcement. Once training is completed, resources are provided, and investigating cases is made a priority by the Government, trafficking cases will be more readily identified.

Police can improve communications between law enforcement and the sex worker community by having at least one designated police officer per police district for sex crimes, including crimes under the PRA and migrant prostitution. That person should occupy that role long-term and not be moved to other duties so that contacts and relationships can be developed.

Police Superintendents, and the people to whom they report, should specifically designate resources to investigate and prosecute cases under the PRA in which offenders hire, live off the earnings of, or engage in commercial sex with at-risk youth. Specifically, more prosecutions of offenders in the latter category, those who seek out underage youth to engage in commercial sex, are necessary. The demand for individuals under 18 may be reduced if the offenders face jail sentences and forfeiture of any items used to commit the crime, including the car the offender is in when he or she contracts for commercial sex with a person under 18 years of age.

The Prostitution Law Review Committee is authorised to consider whether any amendments to the PRA are advisable.⁴¹² The Committee will no doubt look at penalties when it reviews the operation of the PRA, and hopefully raise the penalty in section 23 of the PRA to 14 years, bringing the PRA penalties in line with those of comparable crimes in sections 98AA and 208 of the Crimes Act. Once the maximum penalty is higher, Courts may begin to increase their sentences for those who hire or engage in commercial sex with those under 18.

⁴¹² PRA, s 42(b)

Another potential amendment could address the different standards for search warrants for crimes under the PRA versus search warrants for other crimes which are governed by the Summary Proceedings Act (SPA). The PRA criminalises inducing or compelling a person to provide commercial sexual services. This crime should be included as one for which the Police can seek a warrant under section 30 of the PRA, which sets out a “good cause to suspect” standard for obtaining warrants. The “good cause to suspect” standard is lower than the one available to Police under the SPA which is “reasonable ground to believe.” The same search warrant standard of “good cause to suspect” should be used for all crimes under the PRA, including those set out in section 16.

New Zealand can do more in particular for the under-age youth who find themselves working in the sex industry. New Zealand has no comprehensive, coordinated programme to address child prostitution. The Prostitution Law Review Committee is tasked with assessing the “nature and adequacy of the means available to assist persons to avoid or cease working as sex workers.”⁴¹³ The Committee should work with Child Youth and Family Services and the Ministry of Social Development, to come up with recommendations for social programmes targeted to young people engaged in, or at risk of becoming engaged in, prostitution. One place to begin would be a review of the eligibility criteria for the independent youth benefit. Social programmes and outreach are needed to help these young victims and give them alternatives other than street work.

⁴¹³ PRA, s 42(b)

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APPENDIX ONE – PROSTITUTION REFORM ACT, 2003

Examined and certified:

Clerk of the House of Representatives

*In the name and on behalf of Her Majesty Queen Elizabeth
the Second I hereby assent to this Act this 27th day
of June 2003*

Governor-General.

Prostitution Reform Act 2003

Public Act 2003 No 28

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Prostitution Reform Act 2003.

Part 1
Preliminary provisions

2 Commencement

(1) This Act (other than the provisions referred to in subsection (2)) comes into force on the day after the date on which it receives the Royal assent.

(2) Part 3 and sections 49 and 50(2) come into force 6 months after the date on which this Act receives the Royal assent.

3 Purpose

The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

- (a) safeguards the human rights of sex workers and protects them from exploitation:
- (b) promotes the welfare and occupational health and safety of sex workers:
- (c) is conducive to public health:
- (d) prohibits the use in prostitution of persons under 18 years of age:
- (e) implements certain other related reforms.

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

brothel means any premises kept or habitually used for the purposes of prostitution; but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere

business of prostitution means a business of providing, or arranging the provision of, commercial sexual services

client means a person who receives, or seeks to receive, commercial sexual services

commercial sexual services means sexual services that—

- (a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and
- (b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person)

member means a member of the Prostitution Law Review Committee

premises includes a part of premises

prostitution means the provision of commercial sexual services

Prostitution Law Review Committee means the committee appointed under section 43

public place—

- (a) means a place that is open to, or being used by, the public, whether admission is free or on payment of a

charge and whether any owner or occupier of the place is lawfully entitled to exclude or eject a person from that place; and

- (b) includes any aircraft, hovercraft, ship, ferry, or other vessel, train, or vehicle carrying or available to carry passengers for reward

sex worker means a person who provides commercial sexual services

small owner-operated brothel means a brothel—

- (a) at which not more than 4 sex workers work; and
- (b) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel

territorial authority has the same meaning as in section 5(1) of the Local Government Act 2002.

- (2) In this Act, a reference to **providing** or **receiving** commercial sexual services means to provide or receive those services personally (rather than arranging another person to provide the services or arranging for the services to be received by another person).

5 Definition of operator

- (1) In this Act, **operator**, in relation to a business of prostitution, means a person who, whether alone or with others, owns, operates, controls, or manages the business; and includes (without limitation) any person who—
 - (a) is the director of a company that is an operator; or
 - (b) determines—
 - (i) when or where an individual sex worker will work; or
 - (ii) the conditions in which sex workers in the business work; or
 - (iii) the amount of money, or proportion of an amount of money, that a sex worker receives as payment for prostitution; or
 - (c) is a person who employs, supervises, or directs any person who does any of the things referred to in paragraph (b).
- (2) Despite anything in subsection (1), a sex worker who works at a small owner-operated brothel is not an operator of that

business of prostitution, and, for the purposes of this Act, a small owner-operated brothel does not have an operator.

6 Act binds the Crown

This Act binds the Crown.

Part 2
Commercial sexual services

Contracts for commercial sexual services not void

7 Contract for provision of commercial sexual services not void

No contract for the provision of, or arranging the provision of, commercial sexual services is illegal or void on public policy or other similar grounds.

Health and safety requirements

8 Operators of businesses of prostitution must adopt and promote safer sex practices

- (1) Every operator of a business of prostitution must—
 - (a) take all reasonable steps to ensure that no commercial sexual services are provided by a sex worker unless a prophylactic sheath or other appropriate barrier is used if those services involve vaginal, anal, or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections; and
 - (b) take all reasonable steps to give health information (whether oral or written) to sex workers and clients; and
 - (c) if the person operates a brothel, display health information prominently in that brothel; and
 - (d) not state or imply that a medical examination of a sex worker means the sex worker is not infected, or likely to be infected, with a sexually transmissible infection; and
 - (e) take all other reasonable steps to minimise the risk of sex workers or clients acquiring or transmitting sexually transmissible infections.
- (2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

- (3) The obligations in this section apply only in relation to commercial sexual services provided for the business and to sex workers and clients in connection with those services.
- (4) In this section, **health information** means information on safer sex practices and on services for the prevention and treatment of sexually transmissible infections.

9 Sex workers and clients must adopt safer sex practices

- (1) A person must not provide or receive commercial sexual services unless he or she has taken all reasonable steps to ensure a prophylactic sheath or other appropriate barrier is used if those services involve vaginal, anal, or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections.
- (2) A person must not, for the purpose of providing or receiving commercial sexual services, state or imply that a medical examination of that person means that he or she is not infected, or likely to be infected, with a sexually transmissible infection.
- (3) A person who provides or receives commercial sexual services must take all other reasonable steps to minimise the risk of acquiring or transmitting sexually transmissible infections.
- (4) Every person who contravenes subsection (1), subsection (2), or subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

10 Application of Health and Safety in Employment Act 1992

- (1) A sex worker is at work for the purposes of the Health and Safety in Employment Act 1992 while providing commercial sexual services.
- (2) However, nothing in this Act (including subsection (1)) limits that Act or any regulations or approved codes of practice under that Act.

Advertising restrictions

11 Restrictions on advertising commercial sexual services

- (1) Advertisements for commercial sexual services may not be—
 - (a) broadcast on radio or television; or

- (b) published in a newspaper or periodical, except in the classified advertisements section of the newspaper or periodical; or
 - (c) screened at a public cinema.
- (2) A person who does any of the things described in subsection (1), or who authorises any of the things described in that subsection to be done, commits an offence and is liable on summary conviction to,—
- (a) in the case of a body corporate, a fine not exceeding \$50,000; and
 - (b) in any other case, a fine not exceeding \$10,000.
- (3) In this section, **advertisement** means any words, or any pictorial or other representation, used to notify the availability of, or promote the sale of, commercial sexual services, either generally or specifically.

Territorial authority may make bylaws

12 Bylaws controlling signage advertising commercial sexual services

- (1) A territorial authority may make bylaws for its district that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services.
- (2) Bylaws may be made under this section only if the territorial authority is satisfied that the bylaw is necessary to prevent the public display of signage that—
- (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or
 - (b) is incompatible with the existing character or use of that area.
- (3) Bylaws made under this section may prohibit or regulate signage in any terms, including (without limitation) by imposing restrictions on the content, form, or amount of signage on display.
- (4) Parts 8 and 9 of the Local Government Act 2002 (which are about, among other things, the enforcement of bylaws and penalties for their breach) apply to a bylaw made under this section as if the bylaw had been made under section 145 of that Act.

13 Procedure for making bylaws

- (1) A bylaw made under section 12 must be made in the same manner in all respects as if it were a bylaw made under the Local Government Act 2002.
- (2) Despite subsection (1), a bylaw may be made under section 12 even if, contrary to section 155(3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.

14 Bylaws regulating location of brothels

Without limiting section 145 of the Local Government Act 2002, a territorial authority may make bylaws for its district under section 146 of that Act for the purpose of regulating the location of brothels.

*Resource consents***15 Resource consents in relation to businesses of prostitution**

- (1) When considering an application for a resource consent under the Resource Management Act 1991 for a land use relating to a business of prostitution, a territorial authority must have regard to whether the business of prostitution—
 - (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or
 - (b) is incompatible with the existing character or use of the area in which the land is situated.
- (2) Having considered the matters in subsection (1)(a) and (b) as well as the matters it is required to consider under the Resource Management Act 1991, the territorial authority may, in accordance with sections 104A to 104D of that Act, grant or refuse to grant a resource consent, or, in accordance with section 108 of that Act, impose conditions on any resource consent granted.
- (3) Subsection (1) does not limit or affect the operation of the Resource Management Act 1991 in any way, and it may be overridden, with respect to particular areas within a district, by the provisions of a district plan or proposed district plan.

*Protections for sex workers***16 Inducing or compelling persons to provide commercial sexual services or earnings from prostitution**

- (1) No person may do anything described in subsection (2) with the intent of inducing or compelling another person (**person A**) to—
 - (a) provide, or to continue to provide, commercial sexual services to any person; or
 - (b) provide, or to continue to provide, to any person any payment or other reward derived from commercial sexual services provided by person A.
- (2) The acts referred to in subsection (1) are any explicit or implied threat or promise that any person (**person B**) will—
 - (a) improperly use, to the detriment of any person, any power or authority arising out of—
 - (i) any occupational or vocational position held by person B; or
 - (ii) any relationship existing between person B and person A:
 - (b) commit an offence that is punishable by imprisonment:
 - (c) make an accusation or disclosure (whether true or false)—
 - (i) of any offence committed by any person; or
 - (ii) of any other misconduct that is likely to damage seriously the reputation of any person; or
 - (iii) that any person is unlawfully in New Zealand:
 - (d) supply, or withhold supply of, any controlled drug within the meaning of the Misuse of Drugs Act 1975.
- (3) Every person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

17 Refusal to provide commercial sexual services

- (1) Despite anything in a contract for the provision of commercial sexual services, a person may, at any time, refuse to provide, or to continue to provide, a commercial sexual service to any other person.
- (2) The fact that a person has entered into a contract to provide commercial sexual services does not of itself constitute consent for the purposes of the criminal law if he or she does not

consent, or withdraws his or her consent, to providing a commercial sexual service.

- (3) However, nothing in this section affects a right (if any) to rescind or cancel, or to recover damages for, a contract for the provision of commercial sexual services that is not performed.

Protections for persons refusing to work as sex workers

18 Refusal to work as sex worker does not affect entitlements

- (1) A person's benefit, or entitlement to a benefit, under the Social Security Act 1964 may not be cancelled or affected in any other way by his or her refusal to work, or to continue to work, as a sex worker (and, in this case, that work is not suitable employment for that person under that Act).
- (2) A person's entitlements under the Injury Prevention, Rehabilitation, and Compensation Act 2001 may not be lost or affected in any other way by his or her being capable of working as a sex worker if he or she refuses to do, or to continue to do, that kind of work.
- (3) In this section, **refusal** means a refusal to do this kind of work in general, rather than a refusal of a particular job or at a particular time.

Application of Immigration Act 1987

19 Application of Immigration Act 1987

- (1) No permit may be granted under the Immigration Act 1987 to a person on the basis that the person—
 - (a) has provided, or intends to provide, commercial sexual services; or
 - (b) has acted, or intends to act, as an operator of a business of prostitution; or
 - (c) has invested, or intends to invest, in a business of prostitution.
- (2) It is a condition of every temporary permit or limited purpose permit granted under the Immigration Act 1987 that the holder of the permit may not, while in New Zealand,—
 - (a) provide commercial sexual services; or
 - (b) act as an operator of a New Zealand business of prostitution; or
 - (c) invest in a New Zealand business of prostitution.

- (3) A temporary permit or limited purpose permit granted under the Immigration Act 1987 may be revoked if the holder does any of the things listed in subsection (2)(a) to (c).
- (4) If the holder of a residence permit is subject to a requirement under section 18A of the Immigration Act 1987, the requirement is deemed not to have been met (for the purpose of revoking the permit under section 20(1)(d) of that Act) if the permit holder acts as an operator of, or invests in, a New Zealand business of prostitution.
- (5) This section applies with respect to every permit granted under the Immigration Act 1987, and to every requirement imposed under section 18A of that Act, whether granted or imposed before or after the commencement of this section.

Prohibitions on use in prostitution of persons under 18 years

20 No person may assist person under 18 years in providing commercial sexual services

No person may cause, assist, facilitate, or encourage a person under 18 years of age to provide commercial sexual services to any person.

21 No person may receive earnings from commercial sexual services provided by person under 18 years

No person may receive a payment or other reward that he or she knows, or ought reasonably to know, is derived, directly or indirectly, from commercial sexual services provided by a person under 18 years of age.

22 No person may contract for commercial sexual services from, or be client of, person under 18 years

- (1) No person may enter into a contract or other arrangement under which a person under 18 years of age is to provide commercial sexual services to or for that person or another person.
- (2) No person may receive commercial sexual services from a person under 18 years of age.

23 Offence to breach prohibitions on use in prostitution of persons under 18 years

- (1) Every person who contravenes section 20, section 21, or section 22 commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 7 years.
- (2) No person contravenes section 20 merely by providing legal advice, counselling, health advice, or any medical services to a person under 18 years of age.
- (3) No person under 18 years of age may be charged as a party to an offence committed on or with that person against this section.

*Powers to enter and inspect compliance with health and safety requirements***24 Purpose of inspection**

- (1) The powers of inspection in section 26 may be used only for the purpose of determining whether or not a person is complying, or has complied, with section 8 or section 9.
- (2) This section does not limit the ability of an inspector to report any other offence or suspected offence to the police or any other relevant agency.

25 Inspectors

- (1) Every person designated as a Medical Officer of Health by the Director-General of Health under the Health Act 1956 is an inspector for the purposes of this Act.
- (2) A Medical Officer of Health may also appoint persons as inspectors for his or her health district, on a permanent or temporary basis, for the purposes of this Act.
- (3) A Medical Officer of Health may appoint a person as an inspector only if satisfied that he or she is suitably qualified or trained to carry out that role.
- (4) That appointment must be in writing and must contain—
 - (a) a reference to this section; and
 - (b) the full name of the appointed person; and
 - (c) a statement of the powers conferred on the appointed person by section 26 and the purpose under section 24 for which those powers may be used.

26 Powers to enter and inspect compliance with health and safety requirements

- (1) An inspector may, at any reasonable time, enter premises for the purpose of carrying out an inspection if he or she has reasonable grounds to believe that a business of prostitution is being carried on in the premises.
- (2) For the purposes of the inspection, the inspector may—
 - (a) conduct reasonable inspections;
 - (b) take photographs and measurements and make sketches and recordings;
 - (c) require any of the following persons to provide information or assistance reasonably required by the inspector:
 - (i) a person who operates the business of prostitution, or an employee or agent of that person;
 - (ii) a sex worker or client of the business of prostitution;
 - (d) take copies of the information referred to in paragraph (c).
- (3) An inspector may seize and retain any thing in premises entered under this section that the inspector has reasonable grounds to believe will be evidence of the commission of an offence against section 8 or section 9.
- (4) Nothing in this section limits or affects the privilege against self-incrimination.
- (5) An inspector may take any person acting under the inspector's direct supervision into the premises to assist him or her with the inspection.

27 Entry of homes

- (1) An inspector may not enter a home under section 26 unless he or she—
 - (a) has the consent of an occupier of that home; or
 - (b) is authorised to do so by a warrant issued under subsection (2).
- (2) A District Court Judge, Justice, Community Magistrate, or Registrar of a District Court (who is not a member of the police) may issue a warrant to enter a home or part of a home if, on application made on oath, he or she is satisfied that there are reasonable grounds for believing that—

- (a) a business of prostitution is being carried on in the home; or
 - (b) the home or the part of the home is the only practicable means through which to enter premises where a business of prostitution is being carried on.
- (3) The warrant must be directed to an inspector by name and must be in the prescribed form.

28 Requirements when carrying out inspection

- (1) An inspector must, on entering premises under section 26 and when reasonably requested at any subsequent time, produce—
- (a) evidence of his or her designation as a Medical Officer of Health or appointment as an inspector by a Medical Officer of Health; and
 - (b) evidence of his or her identity; and
 - (c) a statement of the powers conferred on the inspector by section 26 and the purpose under section 24 for which those powers may be used; and
 - (d) if entering a home under a warrant issued under section 27(2), that warrant.
- (2) If the owner or occupier of the premises is not present at the time an inspector enters and inspects the premises, the inspector must—
- (a) leave in a prominent location at those premises a written statement that includes the following information:
 - (i) the time and date of the entry; and
 - (ii) the name of the person who entered the premises; and
 - (iii) the fact that the person is an inspector; and
 - (iv) the reasons for the entry; and
 - (v) the address of the office of the Ministry of Health to which enquiries should be made; and
 - (b) take all other reasonable steps to give that information to the owner or occupier of the premises.
- (3) If any thing is seized in the course of an inspection, the inspector must leave in a prominent location at the premises, or deliver or send by registered mail to the owner or occupier within 10 working days after the entry, a written inventory of all things seized.
- (4) Section 199 of the Summary Proceedings Act 1957 applies to any thing seized in the course of an inspection (as if the

inspector were a constable and with any other necessary modifications).

29 Obstructing inspectors

Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, who intentionally obstructs, hinders, or deceives an inspector in the execution of a power or duty under this Act.

Powers of entry

30 Warrant for police to enter

- (1) A District Court Judge, Justice, Community Magistrate, or Registrar of a District Court (who is not a member of the police) may issue a warrant to enter a place if he or she is satisfied that—
 - (a) there is good cause to suspect that an offence under either of the following provisions is being, has been, or is likely to be committed in the place:
 - (i) section 23 (which concerns using persons under 18 years in prostitution);
 - (ii) section 34 (which concerns being an operator while not holding a certificate); and
 - (b) there are reasonable grounds to believe that it is necessary for a member of the police to enter the place for the purpose of preventing the commission or repetition of that offence or investigating that offence.
- (2) An application for a warrant must be made in writing and on oath.
- (3) The Judge, Justice, Community Magistrate, or Registrar may impose any reasonable conditions on the exercise of the warrant that he or she thinks fit.

31 Form and content of warrant

- (1) A warrant under section 30(1)(a) must be in the prescribed form and state—
 - (a) the place that may be entered; and
 - (b) which of the offences listed in section 30 the warrant has been issued in respect of; and
 - (c) the period during which the warrant may be executed, which must not exceed 14 days from the date of issue; and

- (d) any conditions that apply to the warrant under section 30(3).
- (2) The warrant must be directed generally to every member of the police.

32 Powers conferred by warrant

- (1) Subject to any conditions stated in the warrant, a warrant under section 30 authorises the person executing it to—
 - (a) enter and search the place stated in the warrant at any time of the day or night; and
 - (b) use the assistance that is reasonable in the circumstances to enter and search the place; and
 - (c) use the force that is reasonable in the circumstances to gain entry and to break open any thing in, on, over, or under the place; and
 - (d) search for and seize any property or thing that the person has reasonable grounds to believe will be evidence of the commission of an offence in respect of which the warrant is issued.
- (2) A person who is called to assist to execute the warrant may exercise the powers described in subsection (1)(c) and (d).
- (3) The power to enter a place under the warrant may be exercised once only.

33 Requirements when executing warrant

- (1) A member of the police who executes a warrant under section 30 must, on entering the place and when reasonably requested at any subsequent time, produce—
 - (a) the warrant; and
 - (b) if not in uniform, evidence that he or she is a member of the police.
- (2) If the owner or occupier of the place is not present at the time the warrant is executed, the member of the police must—
 - (a) leave in a prominent location at the place a written statement that includes the following information:
 - (i) the time and date of the entry; and
 - (ii) the name of the member of the police who entered the place; and
 - (iii) the fact that the person is a member of the police; and
 - (iv) the reasons for the entry; and

- (v) the address of the police station to which enquiries should be made; and
 - (b) take all other reasonable steps to give that information to the owner or occupier of the place.
- (3) If any thing is seized in the execution of the warrant, the member of the police must leave in a prominent location at the place, or deliver or send by registered mail to the owner or occupier within 10 working days after the entry, a written inventory of all things seized.
- (4) Section 199 of the Summary Proceedings Act 1957 applies to any thing seized in the execution of the warrant (with any necessary modifications).

Part 3

Operator certificates

34 Operators of businesses of prostitution to hold certificates

- (1) Every operator of a business of prostitution (other than a company) must hold a certificate issued under section 35.
- (2) Every person who, while required by subsection (1) to hold a certificate, does not hold a certificate commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.
- (3) If a person who is charged under subsection (2) claims that he or she is not an operator because he or she is a sex worker at a small owner-operated brothel and is not an operator of any other business of prostitution, it is for the person charged to prove that assertion on the balance of probabilities.
- (4) Despite subsection (2), no person may be convicted of an offence under that subsection if the period during which the person does not hold a certificate is the first 6 months after this section comes into force.

35 Application for, and grant of, certificates

- (1) An applicant for a certificate must apply to the Registrar.
- (2) In this Part, **Registrar** means the Registrar of the District Court at Auckland, or the Registrar of any other District Court identified in regulations made under this Act as the, or a, Registrar who may accept applications under this section.

- (3) The application must be in the prescribed form and be accompanied by the prescribed fee.
- (4) The application may require the applicant to provide no more than the following:
 - (a) the applicant's full name, date of birth, and gender;
 - (b) any other names by which the applicant is, or ever has been, known;
 - (c) the address to which the applicant wishes any certificate and related correspondence to be sent;
 - (d) a photocopy of any form of official identification that contains a photograph of the applicant, such as a passport or driver licence, that is authenticated in the prescribed manner;
 - (e) 1 or more recent photographs of the applicant that comply with the prescribed requirements and are authenticated in the prescribed manner;
 - (f) if an order has been made under section 37, a copy of the order.
- (5) The Registrar must issue a certificate to an applicant if—
 - (a) the applicant pays the prescribed fee, supplies a properly completed application form, and attaches the required photocopy and photographs; and
 - (b) the applicant is aged 18 years or older; and
 - (c) the applicant is either—
 - (i) not disqualified under section 36 from holding a certificate; or
 - (ii) is disqualified, but has been granted a waiver of disqualification under section 37 and the waiver has not been cancelled.
- (6) Every certificate must be in the prescribed form and must contain a photograph of the holder.
- (7) If a certificate is refused, the Registrar must notify the applicant in writing, with reasons, and give information about how to apply for a waiver of disqualification under section 37.

36 Disqualification from holding certificate

- (1) A person is disqualified from holding a certificate if he or she has been convicted at any time of any of the disqualifying offences set out in subsection (2), or has been convicted of an attempt to commit any such offence, of conspiring to commit

any such offence, or of being an accessory after the fact to any such offence.

- (2) The disqualifying offences are as follows:
- (a) an offence under this Act (other than an offence under section 39(3), section 40(2), and section 41(3));
 - (b) an offence under any of the following sections or Parts of the Crimes Act 1961 that is punishable by 2 or more years' imprisonment:
 - (i) section 98A (participation in an organised criminal group):
 - (ii) sections 127 to 144C (includes sexual crimes):
 - (iii) Part VIII (includes murder, manslaughter, assault, and abduction):
 - (iv) sections 234 to 244 (robbery, extortion, and burglary):
 - (v) section 257A (money laundering).
 - (c) an offence under the Arms Act 1983 that is punishable by imprisonment:
 - (d) in relation to the Misuse of Drugs Act 1975,—
 - (i) an offence under section 6 (other than possession of a Class C controlled drug):
 - (ii) an offence under section 9, section 12A, or section 12B:
 - (iii) an offence under any other section, but only if it relates to a Class A or a Class B controlled drug.

37 Waiver of disqualification

- (1) A person who is disqualified from holding a certificate may apply in writing to the Registrar for an order waiving the disqualification.
- (2) On receipt of an application, the Registrar must—
 - (a) refer the application to a District Court Judge for determination; and
 - (b) send a copy of the application to the Commissioner of Police for a report on the matters referred to in subsection (4)(b).
- (3) The Commissioner of Police must provide a report to the Registrar within 3 weeks of receipt of the request, and the Registrar must immediately forward a copy of the report to the applicant.

- (4) A District Court Judge may make an order waiving a disqualification if he or she is satisfied that—
 - (a) the applicant's offending was of a nature, or occurred so long ago, that it ought no longer to be a barrier to obtaining a certificate; and
 - (b) the applicant is not, and has not recently, been associated or involved with persons who would themselves be disqualified under section 36 and who might reasonably be expected to exert an influence on the applicant.
- (5) The District Court Judge who determines the application—
 - (a) may not make the order until at least 2 weeks after receipt of the report provided under subsection (3); and
 - (b) must determine the application on the basis of the material contained in the application, the police report, and any further written material provided by the applicant, whether in response to the police report or otherwise.
- (6) An order waiving disqualification remains in force until it is cancelled under subsection (7) or subsection (8).
- (7) An order waiving a disqualification is cancelled, by operation of this subsection, if the person to whom it applies is convicted of any offence referred to in section 36(2).
- (8) A District Court Judge may cancel an order waiving a person's disqualification if—
 - (a) the police make an application to the Registrar for an order cancelling the waiver; and
 - (b) a copy of the police application is sent to the person at the address supplied in his or her application for a certificate; and
 - (c) at least 2 weeks after sending that application, either the Registrar has not received any response from the certificate holder or, if the holder has made submissions in writing, the District Court Judge has considered those submissions; and
 - (d) the District Court Judge is satisfied, on the basis of the police application and any submissions received from the person concerned, that the waiver ought to be cancelled on the grounds that the person is associated or involved with persons who would themselves be disqualified under section 36 and who might reasonably be expected to be exerting an influence over the person.

38 Expiry, renewal, and replacement of certificate

- (1) A certificate expires 1 year after the date on which it is issued.
- (2) A certificate holder may apply, at any time within 2 months before the expiry of his or her certificate, for renewal of the certificate, in which case section 35 applies as if the application for renewal were an application for a certificate.
- (3) If an application for renewal is made, but not determined, before a certificate expires, the original certificate does not expire until the application for renewal is determined.
- (4) The Registrar may issue a replacement certificate to a certificate holder if—
 - (a) the holder applies for a replacement certificate and the Registrar is satisfied that the original certificate has been lost or destroyed; and
 - (b) the holder supplies 1 or more recent photographs of himself or herself that comply with the prescribed requirements and are authenticated in the prescribed manner; and
 - (c) the holder pays the prescribed fee (if any).

39 Cancellation of certificate

- (1) The Registrar must cancel a certificate on notification that the certificate holder—
 - (a) is disqualified from holding a certificate as a result of a conviction for any offence referred to in section 36(2); or
 - (b) has had his or her waiver of disqualification cancelled.
- (2) The cancellation of the certificate takes effect 5 days after notification of the cancellation is sent to the certificate holder at the address supplied in his or her application for a certificate.
- (3) A person whose certificate is cancelled commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, if he or she fails to return the certificate to a District Court within 1 month of the cancellation of the certificate.

40 Operator to produce certificate on request

- (1) A member of the police may, on producing evidence that he or she is a member of the police, require any person whom the member believes on reasonable grounds is an operator to

produce that person's certificate for inspection, and the person must produce his or her certificate to the member, or to another member of the police at a local police station, within 24 hours of the request.

- (2) If a request under subsection (1) is made to the holder of a certificate, that holder commits an offence, and is liable on summary conviction to a fine not exceeding \$2,000, if he or she fails without reasonable excuse to produce his or her certificate as required by that subsection.

41 Court records

- (1) Court records concerning the identity of applicants for certificates, applicants for waiver of disqualification, and certificate holders may be searched, inspected, or copied only by—
- (a) the applicant or holder concerned; and
 - (b) the Registrar; and
 - (c) the police, but only for the purpose of investigating an offence.
- (2) Nothing in this section limits the power of the Registrar to prepare and supply (whether for use by the Department for Courts or any other purpose) statistical information about applicants for certificates, applicants for waiver of disqualification, and certificate holders, as long as the information is supplied in a form that does not identify individual applicants or certificate holders.
- (3) A person who, in contravention of this section, obtains or uses information that is sourced from, or purports to be sourced from, the court records referred to in this section commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

Part 4

Miscellaneous provisions

*Review of operation of Act and related matters by
Prostitution Law Review Committee*

42 Review of operation of Act and related matters

- (1) The Prostitution Law Review Committee must,—
- (a) as soon as practicable after the commencement of this Act,—

- (i) assess the number of persons working as sex workers in New Zealand and any prescribed matters relating to sex workers or prostitution; and
 - (ii) report on its findings to the Minister of Justice; and
 - (b) no sooner than the expiry of 3 years, but before the expiry of 5 years, after the commencement of this Act,—
 - (i) review the operation of this Act since its commencement; and
 - (ii) assess the impact of this Act on the number of persons working as sex workers in New Zealand and on any prescribed matters relating to sex workers or prostitution; and
 - (iii) assess the nature and adequacy of the means available to assist persons to avoid or cease working as sex workers; and
 - (iv) consider whether any amendments to this Act or any other law are necessary or desirable and, in particular, whether the system of certification is effective or could be improved, whether any other agency or agencies could or should administer it, and whether a system is needed for identifying the location of businesses of prostitution; and
 - (v) consider whether any other amendments to the law are necessary or desirable in relation to sex workers or prostitution; and
 - (vi) consider whether any further review or assessment of the matters set out in this paragraph is necessary or desirable; and
 - (vii) report on its findings to the Minister of Justice; and
 - (c) carry out any other review, assessment, and reporting required by regulations made under this Act.
- (2) The Minister of Justice must present a copy of any report provided under this section to the House of Representatives as soon as practicable after receiving it.

43 Prostitution Law Review Committee

- (1) The Prostitution Law Review Committee must consist of 11 members appointed by the Minister of Justice.
- (2) The Minister of Justice must appoint—
 - (a) 2 persons nominated by the Minister of Justice; and
 - (b) 1 person nominated by the Minister of Women's Affairs after consultation with the Minister of Youth Affairs; and
 - (c) 1 person nominated by the Minister of Health; and
 - (d) 1 person nominated by the Minister of Police; and
 - (e) 2 persons nominated by the Minister of Commerce to represent operators of businesses of prostitution; and
 - (f) 1 person nominated by the Minister of Local Government; and
 - (g) 3 persons nominated by the New Zealand Prostitutes Collective (or, if there is no New Zealand Prostitutes Collective, by any other body that the Minister of Justice considers represents the interests of sex workers).
- (3) The Minister of Justice may, on the recommendation of a member's nominator, remove a member from office for inability to perform the members' duties, misconduct by the member, or any other just cause proved to the satisfaction of the nominator.
- (4) The member is not entitled to compensation or other payment relating to removal from office.
- (5) The Prostitution Law Review Committee ceases to exist on a date appointed by the Minister of Justice, by notice in the *Gazette*, that is after the date of its report to the Minister under section 42(1)(b)(vii).

44 Other provisions on appointment, removal, term, and resignation of members

- (1) A member must be appointed or removed by written notice to the member and his or her nominator.
- (2) A member holds office for a term stated in that notice of up to 5 years.
- (3) A member whose term of office expires continues to hold office until he or she is reappointed or his or her successor is appointed.

- (4) However, all members cease to hold office on the date on which the Prostitution Law Review Committee ceases to exist.
- (5) A person may be reappointed as a member.
- (6) A member may resign by written notice to the Minister of Justice and his or her nominator.
- (7) The powers of the Prostitution Law Review Committee are not affected by any vacancy in its membership.

45 Remuneration of members

- (1) A member is entitled to receive remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951 (and the provisions of that Act apply as if the Prostitution Law Review Committee were a statutory Board under that Act).
- (2) That remuneration must be paid out of the departmental bank account operated by the Ministry of Justice.
- (3) This section does not apply to a person who is a member in his or her capacity as an employee of a department.

46 Procedure of Prostitution Law Review Committee

The Prostitution Law Review Committee may regulate its own procedure, except as provided in regulations made under this Act.

Regulations

47 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the forms of warrants to be issued under sections 27 and 30:
- (b) prescribing the forms, certificates, and fees required under Part 3 in connection with operator certificates:
- (c) prescribing how the photographs and photocopies required under Part 3 are to be authenticated:
- (d) prescribing the size, or range of sizes, of photographs to be supplied with an application for a certificate, and the number of copies:

- (e) prescribing that the Registrar of a particular District Court is the, or a, Registrar for the purposes of Part 3, whether in addition to, or instead of, the Registrar of any other District Court:
- (f) prescribing matters relating to the Prostitution Law Review Committee, including its powers, additional functions of reviewing, assessing, and reporting on the operation of this Act or on other matters relating to sex workers or prostitution (if any), any limits on the periods for which it may meet, matters relating to the chairperson and members, its financial provisions, its procedures, and its administration:
- (g) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Repeals, amendments, and transitional provisions

48 Repeals coming into force on day after Royal assent

- (1) The following enactments are repealed:
 - (a) sections 147 to 149A of the Crimes Act 1961 (1961 No 43):
 - (b) section 26 of the Summary Offences Act 1981 (1981 No 113).
- (2) Sections 30(1)(e), 31(1)(d), and 32 of the Massage Parlours Act 1978 are repealed.

49 Repeals and revocations coming into force when Part 3 comes into force

- (1) The Massage Parlours Act 1978 (1978 No 13) is repealed.
- (2) The Massage Parlours Regulations 1979 (SR 1979/35) are revoked.

50 Consequential amendments

- (1) The Acts specified in Part 1 of the Schedule are consequentially amended in the manner set out in that schedule.
- (2) The regulations specified in Part 2 of the Schedule are consequentially amended in the manner set out in that schedule.

51 Transitional provisions for past offences

- (1) No person may be convicted of an offence against any of the enactments repealed by section 48 (other than an offence against section 149A of the Crimes Act 1961) on or after the commencement of this Act if the offence was committed before the commencement of this Act.
 - (2) The repeal of section 149A of the Crimes Act 1961 does not affect a liability to conviction or to a penalty for an offence committed against that section before the commencement of this Act, and that section continues to have effect as if it had not been repealed for the purposes of—
 - (a) investigating the offence:
 - (b) commencing or completing proceedings for the offence:
 - (c) imposing a penalty for the offence.
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Schedule

Consequential amendments to enactments

Part 1 Acts amended

District Courts Act 1947 (1947 No 16)

Insert in Part II of Schedule IA, after Part A, the following Part:

Part AB. Offences against the Prostitution Reform Act 2003

Section of Act	Offence
16	Inducing or compelling persons to provide commercial sexual services or earnings from prostitution

Summary Offences Act 1981 (1981 No 113)

Omit from the heading before section 26 the words “*Soliciting and*”.

Summary Proceedings Act 1957 (1957 No 87)

Omit from Part I of the First Schedule the items relating to sections 147 to 149A of the Crimes Act 1961.

Insert, in its appropriate alphabetical order, in Part II of the First Schedule the following item:

The Prostitution Reform Act 2003	section 23	Offence to breach prohibitions on use in prostitution of persons under 18 years
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Part 2 Regulation amended

Fees Regulations 1987 (SR 1987/68)

Revoke so much of the Schedule as relates to the Massage Parlours Regulations 1979, Amendment No 1.

Legislative history

21 September 2000	Introduction (Bill 66–1)
8 November 2000	First reading and referral to Justice and Electoral Committee
26 November 2002	Reported from Justice and Electoral Committee (Bill 66–2)
19 February 2003	Second reading
26 March, 30 April, 14 May, 11 June 2003	Committee of the whole House (Bill 66–3)
25 June 2003	Third reading

APPENDIX TWO – CRIMES ACT, 1961, SECTIONS 98A-98E

Participation in criminal gang

Heading: inserted, on 1 January 1998, by section 2 of the Crimes Amendment Act (No 2) 1997 (1997 No 93).

98A Participation in organised criminal group

- (1) Every one is liable to imprisonment for a term not exceeding 5 years who participates (whether as a member or an associate member or prospective member) in an organised criminal group, knowing that it is an organised criminal group, and—
 - (a) knowing that his or her participation contributes to the occurrence of criminal activity; or
 - (b) reckless as to whether his or her participation may contribute to the occurrence of criminal activity.
- (2) For the purposes of this Act, a group is an organised criminal group if it is a group of 3 or more people who have as their objective or 1 of their objectives—
 - (a) obtaining material benefits from the commission of offences that are punishable by imprisonment for a term of 4 years or more; or
 - (b) obtaining material benefits from conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of offences that are punishable by imprisonment for a term of 4 years or more; or
 - (c) the commission of serious violent offences (within the meaning of section 312A(1)) that are punishable by imprisonment for a term of 10 years or more; or
 - (d) conduct outside New Zealand that, if it occurred in New Zealand, would constitute the commission of serious violent offences (within the meaning of section 312A(1)) that are punishable by imprisonment for a term of 10 years or more.
- (3) A group of people is capable of being an organised criminal group for the purposes of this Act whether or not—
 - (a) some of them are subordinates or employees of others; or
 - (b) only some of the people involved in it at a particular time are involved in the planning, arrangement, or execution at that time of any particular action, activity, or transaction; or
 - (c) its membership changes from time to time.

Section 98A: substituted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

Smuggling and trafficking in people

Heading: inserted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

98B Terms used in sections 98C to 98F

In sections 98C to 98F, unless the context otherwise requires,—

act of coercion against the person includes—

- (a) abducting the person:
- (b) using force in respect of the person:
- (c) harming the person:
- (d) threatening the person (expressly or by implication) with the use of force in respect of, or the harming of, the person or some other person

act of deception includes fraudulent action

arranges for an unauthorised migrant to be brought to a State includes—

- (a) organises or procures the bringing to a State:
- (b) recruits for bringing to a State:
- (c) carries to a State

arranges for an unauthorised migrant to enter a State includes—

- (a) organises or procures the entry into a State:
- (b) recruits for entry into a State:
- (c) carries into a State

document includes a thing that is or is intended to be—

- (a) attached to a document; or
- (b) stamped or otherwise signified on a document

harming of a person means causing harm of any kind to the person; and (in particular) includes—

- (a) causing physical, psychological, or financial harm to the person:
- (b) sexually mistreating the person:
- (c) causing harm to the person's reputation, status, or prospects

unauthorised migrant, in relation to a State, means a person who is neither a citizen of the State nor in possession of all the documents required by or under the law of the State for the person's lawful entry into the State.

Section 98B: inserted, on 18 June 2002 by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

Section 98B **for a material benefit**: repealed, on 20 May 2005, by section 3(3) of the Crimes Amendment Act 2005 (2005 No 41).

98C Smuggling migrants

- (1) Every one is liable to the penalty stated in subsection (3) who arranges for an unauthorised migrant to enter New Zealand or any other State, if he or she—
 - (a) does so for a material benefit; and
 - (b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant.
- (2) Every one is liable to the penalty stated in subsection (3) who arranges for an unauthorised migrant to be brought to New Zealand or any other State, if he or she—
 - (a) does so for a material benefit; and
 - (b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant; and
 - (c) either—
 - (i) knows that the person intends to try to enter the State; or
 - (ii) is reckless as to whether the person intends to try to enter the State.
- (3) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.
- (4) Proceedings may be brought under subsection (1) even if the unauthorised migrant did not in fact enter the State concerned.
- (5) Proceedings may be brought under subsection (2) even if the unauthorised migrant was not in fact brought to the State concerned.

Section 98C: inserted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

98D Trafficking in people by means of coercion or deception

- (1) Every one is liable to the penalty stated in subsection (2) who—
 - (a) arranges the entry of a person into New Zealand or any other State by 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both; or
 - (b) arranges, organises, or procures the reception, concealment, or harbouring in New Zealand or any other State of a person, knowing that the person's entry into New

Zealand or that State was arranged by 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both.

- (2) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.
- (3) Proceedings may be brought under this section even if the person coerced or deceived—
 - (a) did not in fact enter the State concerned; or (as the case may be)
 - (b) was not in fact received, concealed, or harboured in the State concerned.
- (4) Proceedings may be brought under this section even if parts of the process by which the person coerced or deceived was brought or came to or towards the State concerned were accomplished without an act of coercion or deception.

Section 98D: inserted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

98E Aggravating factors

- (1) When determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 98C or section 98D, a Court must take into account—
 - (a) whether bodily harm or death (whether to or of a person in respect of whom the offence was committed or some other person) occurred during the commission of the offence:
 - (b) whether the offence was committed for the benefit of, at the direction of, or in association with, an organised criminal group (within the meaning of section 98A(2)):
 - (c) whether a person in respect of whom the offence was committed was subjected to inhuman or degrading treatment as a result of the commission of the offence:
 - (d) if during the proceedings concerned the person was convicted of the same offence in respect of 2 or more people, the number of people in respect of whom the offence was committed.
- (2) When determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against section 98D, a Court must also take into account—

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