

Prostitution Reform Bill

Member's Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Prostitution Reform Bill (the bill) and recommends by majority that it be passed with the amendments shown.

Introduction

Prostitution itself is not an illegal activity in New Zealand. However, a range of offences can be committed in association with acts of prostitution and the law is such that for most forms of prostitution, it is likely a law will be broken at some stage. The purpose of the bill is to decriminalise such activities and make prostitution subject to special provisions in addition to the laws and controls that regulate other businesses. This purpose is not intended to equate with the promotion of prostitution as an acceptable career option but instead to enable sex workers to have and access the same protections afforded to other workers.

The bill, as introduced, has the stated aims of:

- Safeguarding the human rights of sex workers.
- Protecting sex workers from exploitation.
- Promoting the welfare and occupational safety and health of sex workers.
- Creating an environment that is conducive to public health.

- Protecting children from exploitation in relation to prostitution.

Through these measures, supporters of the bill intend it to facilitate contact with occupational safety and health agencies, support the development of models of collective and self-managed prostitution businesses, and make exit from the industry easier.

The bill, as introduced, requires operators of brothels to promote safer sex practices by displaying and providing information about safer sex practices. Offence provisions have been created for those who do not comply with this requirement. The bill validates what may currently be illegal contracts but prohibits coercion and affirms that every sex worker can refuse to provide any sexual service. The bill extends the existing offence in relation to child prostitution. This ensures New Zealand maintains its compliance with its international obligations in respect of child prostitution.

The committee's approach

A majority ¹ of us have taken a pragmatic approach to prostitution; we neither condone nor condemn it, but recognise its existence in society (and the enduring nature of that existence). We acknowledge that prostitution can be harmful to sex workers and that harm should be addressed by legislative and other means. We also agree that criminalisation of prostitutes is not the way to achieve this end. Our focus has been on decriminalisation, improving standards and protections. Those of us who support the bill recognise there are flow-on effects and considered these at length. We understand and do not condone the downsides to the industry. Our decision to support the bill and decriminalisation was made after weighing up the positive and negative effects.

We understand the concern expressed by some submitters that the bill, if passed, could be seen as promoting prostitution as an acceptable profession. Regardless of whether the bill is passed, there will be those who consider sex work to be a legitimate profession and those who do not. The Labour members and Green party categorically affirm that nothing in this bill should be seen as an endorsement or sanction of prostitution or its use. To emphasise this, we recommend amending the purpose clause to this effect and the inclusion of a new clause stating that a refusal to undertake sex work

¹ References to 'a majority of us' or 'we' refer to the Labour members of the committee and the Green party.

will not affect a person's Social Security benefits or ACC entitlements.

The New Zealand First member does not support the bill and is firmly of the belief that legislation governing prostitution should be amended and based upon the Swedish legislation. The minority view of this member and those of the National, ACT and United Future members are attached to this report.

Prostitution law reform models

Three options are usually advanced in any discussion on the reform of law relating to prostitution. These are criminalisation (making prostitution an illegal offence for both client and sex worker), legalisation (making prostitution legal under a statutory regime) and decriminalisation. The decriminalisation option involves removing all laws that criminalise prostitution. One advantage of decriminalisation is that it does not necessarily involve the State condoning or profiting from prostitution. At the same time, it removes the criminal penalties and criminal stigma from prostitution. The pretence maintained by the current law is avoided while also allowing for easier access to health education, safer working environments and the possibility of an easier exit from prostitution.

Some supporters of the bill argue that decriminalisation in itself does not provide the full answer as it leaves open questions of coercion, the potential for the development of large brothels, the involvement of organised crime in prostitution and an overall increase of the industry. Those who take this view favour decriminalisation with some State controls² so there would be:

- policing of crime or drug offences related to prostitution
- protection for women and girls from being forced into prostitution
- protection for public amenities and control over the nuisance aspects of prostitution.

Prostitution law reform in Victoria and New South Wales

In the mid-1990s both Victoria and New South Wales changed their laws relating to prostitution. Each went in a different direction.

² The details of a possible certification (or licensing) regime are discussed later in the report.

Victoria opted for ‘legalisation’ and New South Wales for ‘decriminalisation’.

Victoria

Victoria operates a licensing system that involves a two step process. There is a requirement for prostitution service providers to obtain licenses. There is also a need to obtain a planning permit in respect of the location of a brothel. Prostitution service providers must have a licence to legally carry on the business. The licensing system is overseen by the Business Licensing Authority. This authority also regulates other areas such as motor car traders, real estate agents, credit providers, finance brokers, introduction agents, travel agents, second-hand dealers and pawnbrokers. In considering an application for a licence, the Authority can conduct any inquiries it thinks fit and the applicant must consent to having his or her fingerprints taken as part of the licence application.

Planning controls also operate in respect of brothels. These controls are situated at a local level. The responsible local authority must consider a number of factors when deciding whether or not to grant a permit. These include the existence of another brothel in the neighbourhood, the effect of the operation of a brothel on the children of that neighbourhood, the amenity of the neighbourhood, access to the site, and the provision of off-street parking. There are also restrictions on permits in certain areas. These include if the land is within an area primarily zoned for residential use, the land is within 100 metres of a dwelling, or where there are more than six rooms to be used for prostitution.

In addition to a licensing regime, street soliciting was made illegal and there are penalties for both clients and prostitutes in this regard. At any time a member of the Police over a certain rank can enter and inspect any licensed premise. A brothel that is open for business must be supervised by the licensee or approved manager at all times.

Critics of the Victorian State system argue high compliance costs—both in fees and requirements—have resulted in many illegal prostitution businesses. Because of what are seen as onerous licensing provisions, a number of operators choose to remain outside the system. Critics argue further that women employed in the legal outlets are often exploited by the licensees. They report these women have no control over what services they will provide and can be threatened with dismissal for non-compliance with the demands

of clients. Their options are to remain in an intolerable working environment or turn to illegal street prostitution.

New South Wales

The Disorderly Houses Act 1943 was amended in 1995 to enable prostitutes to work away from the streets. It allows 'well-run' brothels to operate without interference from the Police. Other legislation creates offences relating to coercion. Prohibitions include advertising premises for prostitution, and soliciting in a public street that is near or within view of a dwelling, school, church or hospital.

A brothel is defined as 'premises habitually used for the purposes of prostitution and likely to be used again for that purpose.' This definition covers premises used by only one prostitute for the purpose of prostitution. There are no controls as to who can run a brothel. The local authority can close down a disorderly house but not solely on the ground that the premises are a brothel. Brothels may not be established without the planning consent of local councils and can be regulated like any other business through the Local Environment Plan. Matters taken into consideration include the likely impact (environmental, social, and economic), suitability of the site and public interest. Questions of morality have no relevance in this situation.

There is some variance in approaches by local councils. Some have treated brothels like any other commercial business and have put together guidelines for approving development applications for sex industry premises, while others have not adopted this role easily. There are still a significant number of brothels operating without local authority planning consent. In 1999 a review of the law indicated there was some community concern about the number and location of brothels and the lack of controls over them.

Although there does not appear to be any legislative change proposed for the Disorderly Houses Act, best practice guidelines for local authorities in relation to zoning are being established as a joint sex industry/government initiative.

Does law reform lead to more prostitution?

Many people who oppose decriminalisation of prostitution do so on the basis that overseas experience of this has led to an increase in prostitution. Many submitters point to a much-reported alleged 400 percent growth in the sex industry due to decriminalisation in

New South Wales. Officials investigated this claim for us but were unable to find any statistical evidence that law reform *on its own* leads to a growth in the sex industry. Officials advise us that there may appear to be a growth in the industry because it becomes less hidden in nature. It would appear logical that the removal of criminal sanctions around prostitution means that some people who would not otherwise become involved in prostitution will do so. Officials advise us that it is unlikely that decriminalisation in New Zealand would result in a four-fold increase in the size of the industry.

We recommend later in this report that a review committee (the Prostitution Law Review Committee) be established to report on the operation of the new Act and related matters. We agree this review committee should assess the number of sex workers involved in prostitution and, as a further task, we suggest that it assess the effect of decriminalisation on the New Zealand sex industry in terms of any increase in the numbers involved.

The ‘Swedish’ model

For the last 20 years Sweden has concentrated on addressing prostitution as a social issue. In the late 1970s a programme of decriminalisation with controls was implemented at the same time as a social and economic reform programme. Laws were tightened around procurement to discourage exploitation and penalties introduced for procuring women less than 20 years old. Outreach programmes were established to reduce the incidence of prostitution by social means, with government support for accommodation, money, emotional support and alternative employment. The measures resulted in a 40 percent reduction in prostitution in the 1980s.³

In 1999 a law change in Sweden criminalised the clients of prostitutes. The aim of this law change was to reduce the numbers of people involved in the industry and to actively encourage sex workers to retrain. It targets men, as clients, rather than the prostitutes. Conviction for purchasing sexual services carries a penalty of a fine or up to six months imprisonment and relates to all forms of prostitution, whether purchased on the street, in brothels or in massage parlours. The immediate effect of the law change was a tenfold decrease in the number of women working visibly on the streets of major cities such as Stockholm and Gothenburg, from about 20 to

³ This information is taken from a supplementary briefing paper prepared by the Ministries of Justice, Women’s Affairs and the New Zealand Police (see PRB/WJP/1, dated 1 June 2001).

30 women per night to one to three. Swedish researchers do not think this reduction reflects a move out of sex work altogether, but that a number of workers and clients have chosen less visible ways of making contact.⁴ While the new law change has had the effect of reducing street prostitution, there is conflicting evidence as to whether prostitution overall has been reduced. There are indications that support agencies are finding contact with prostitutes more difficult. Some reports indicate there has been a decline in recruitment of young women into prostitution, but others suggest prostitutes are more exposed to violence and pressure to have unprotected sex.⁵

Amendments to the bill

By majority, we recommend a number of amendments to the bill. For ease of reference, we recommend the bill be split into three parts plus a schedule. We highlight in this section of the report the principal amendments we recommend.

Purpose—clause 3

We recommend this clause be restructured to enhance the clarity of the purpose (which is to decriminalise prostitution) but, as noted above, this should not be seen as morally endorsing or sanctioning prostitution or its use.

We recommend removing the word ‘child’ everywhere it appears in the bill and replacing it with ‘a person under the age of 18 years’. Otherwise, we think people may consider a ‘child’ to be someone under ten or 12 years old when in fact the bill prohibits prostitution with people under 18 years old.

The majority of submitters who refer to this clause are generally supportive of the bill. Several submissions consider decriminalisation is an important step in improving the education and occupational safety and health of sex workers, as well as ensuring the rights of sex workers and putting them on a similar footing to other occupations.

There are various reasons put forward for opposing this clause including the arguments that decriminalisation puts the State in the

⁴ Ibid.

⁵ In any discussion of Swedish prostitution law reform, it is important to note the Swedish government views prostitution as an undesirable social phenomenon and has identified, as a priority, assisting prostitutes to leave their way of life. This commitment has resulted in extensive support structures, strong welfare targeting, specific counselling services and retraining opportunities.

role of pimp, and that it will make prostitution acceptable as a career option. Other submissions express concern decriminalisation will result in an ‘open slather’ making further controls difficult, a reduction in the dignity and equality of women, and there will be an increase in unwanted pregnancies, abortion rates, child abuse and sex crimes.

Interpretation—clause 4: Brothel and business of prostitution

We recommend amending the definition of ‘brothel’ in this clause by replacing the words ‘house, room, set of rooms, or place of any kind’ with the simpler description of ‘premises’. We agree the wording ‘place of any kind’ could be taken to mean a street corner, so we agree the definition needs to be confined to premises.

We also recommend the definition of ‘business of prostitution’ be amended to read ‘a business of providing or arranging the provision of commercial sexual services’ so that it is clear escort agencies are covered by the definition. We recommend the definition be simplified further by removing the unnecessary references to firms, organisations and partnerships to the more simple ‘providing or arranging the provision of commercial sexual services’.

Child

As noted above we recommend the removal of this definition from the clause and, for the sake of clarity, replace all references to a ‘child’ with ‘a person under the age of 18 years’.

Several submissions support the definition of child being under 18 years. These submissions consider this clause is consistent with particular international obligations, in particular Article 34 of the United Nations Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women.

Other submitters express concern about whether the bill will protect those aged between 16 and 18. They argue the age restriction should be 16 years so it is the same as the age of consent and the legal age for marriage and to prevent the creation of a two-tier system creating negative health effects. There is a concern that the age restriction would force 16 to 18-year-olds into street work.

Regardless of the age set in legislation there are likely to continue to be sex workers in the 16 to 18 age range, and it is important to ensure the protection of these workers. We believe the nature of the work is

such that there should be a prohibition beyond the age of consent. Defining a child as under 18 years is consistent also with section 149A of the Crimes Act 1961 that was enacted in April 2001.⁶

The question of how we can assist children under 18 years to exit the industry or dissuade them from turning to prostitution is addressed below in the discussion of clause 9.

Coerce

The definition of ‘coerce’ in the bill as introduced only relates to clause 7. For reasons of clarity, we recommend the definition in clause 4 is removed and clause 7 amended to focus on coercive behaviour rather than a list of prohibited acts.

Commercial sexual services

This definition is pivotal to the bill in terms of the application of the legislation. Most of the remainder of the bill assigns rights and responsibilities in respect of the provision of commercial sexual services; therefore, it is important to be clear about what behaviour is within the ambit of the bill.

We recommend the definition of ‘commercial sexual services’ be narrowed by clarifying that it relates to physical participation in sexual acts by one or more persons with and for the gratification of another person or persons.

Some submissions note the difficulty of the definition of ‘commercial sexual services’ being wide and possibly capturing more people than intended (for example activities where no physical or intimate contact takes place such as stripping and phone sex). The new definition will exclude such activities (but may include ones such as lap dancing, nude massage or other activities involving physical participation in sexual acts with another person). We consider possible difficulties over the definition of ‘commercial sexual service’ and ‘sex worker’ can be avoided by confining the definition in the way we have recommended.

⁶ The purpose of the Crimes Amendment Act 2001 is to bring New Zealand legislation into full compliance with the International Labour Organisation Convention 182 Concerning the Worst Forms of Child Labour. The definition is also consistent with various other international obligations, such as the United Nations Convention on the Rights of the Child.

Safer sex practices

This definition is now part of wider health and safety requirements covered in clause 6 and we recommend the definition is omitted from clause 4. We also recommend the terminology is updated by substituting the word ‘diseases’ for the word ‘infections’ where it appears in clause 6.

Sex worker

We recommend the definition be simplified by amending it to mean ‘a person who provides commercial sexual services’.

Because the definition of ‘sex worker’ refers to provision of ‘commercial sexual services’ some submitters raised similar concerns with respect to the breadth of the definition. The definition in the bill is overly complex and nothing is added by including both those who work in brothels and those who do not.

Contract for provision of commercial sexual services not void—clause 5

Common law may currently make contracts for commercial sexual services unenforceable. The purpose of clause 5 is to ensure that contracts for the provision of (or arranging the provision of) commercial sexual services are enforceable. It is part of the overall framework of the bill that aims to make prostitution subject to the controls and regulations that govern the operation of other businesses.

Some submitters who comment on this clause seem confused about what it is attempting to do. Concerns about verbal contracts and inclusion of remedies for broken contracts can be answered by noting the laws surrounding contract will govern contracts for sexual services in the same way as any other contracts.

Promotion of safer sex practices—clause 6

A majority of us agree the purpose of the bill is to remove the legal impediments to the creation of an environment that protects the occupational safety and health of sex workers and their clients, thereby enhancing public health. These provisions have been split into two separate clauses:

- Clause 6 sets out the obligations on operators of businesses of prostitution to adopt and promote safer sex practices.

- Clause 6A sets out the obligations on sex workers and their clients to adopt safer sex practices.

In order to strengthen and clarify these responsibilities and obligations, we recommend the following amendments to clause 6:

- An obligation for every person who operates a business of prostitution to take all reasonable steps to ensure prophylactic sheaths or other similar protective barriers are used in relation to commercial sexual services provided for that business. The obligation should apply to any person who operates a business of prostitution, regardless of the size of the business. Operators of a business of prostitution also need to take all reasonable steps to minimise the risk of sex workers and clients acquiring or transmitting Sexually Transmitted Infections (STIs).
- Operators of businesses of prostitution must take all reasonable steps to provide health information to sex workers and clients, and, if the business in question is a brothel, that information must be prominently displayed in the brothel. This requirement should only apply to brothels because other businesses of prostitution do not have permanent premises where sex workers and clients are both present.
- The information requirement should refer to health information on safer sex practices and on services for the prevention and treatment of STIs.
- An operator of a business of prostitution must not state or imply that a medical examination means the sex worker is free of an STI.

The majority of submissions that refer to this clause support it. Submitters believe the present law inhibits safe sex practices, creates a fear associated with the possession of safer sex products and lets managers and clients enforce 'risky' practices.

Others express concerns with this clause. These include the difficulty of establishing effective controls and enforcing the safer sex provisions without a licensing regime. Issues around implementation and ongoing monitoring of the requirements of this clause were also raised, as were concerns about public health, the spread of disease and unsafe sex practices.

A majority of us believe the bill will create an environment that is more conducive to positive public health outcomes. While this clause is principally concerned with the promotion of safer sex, we

believe health issues for sex workers and their clients extend beyond STIs. In addition to sexual health issues, sex workers are vulnerable to other health and safety issues such as emotional stress, and alcohol and drug dependence.

Sex workers and clients must adopt safer sex practices— new clause 6A

We discussed at length the issue of whether the obligation to enforce the use of prophylactic sheaths or other similar protective barriers should lie with the sex worker or with both the sex worker and the client. We support the latter and have recommended the inclusion of a separate clause for this purpose.

A majority of us are conscious of the need not to impose unreasonable obligations on sex workers, and to focus the obligation not to engage in unsafe sex practices onto the client. However, we are equally conscious that if similar obligations are not placed on both brothel operators and sex workers in this context, it might result in businesses or risky practices shifting to the street. The effect of section 66 of the Crimes Act 1961 makes it an offence for a client to cause a sex worker to breach this new provision by not using a prophylactic sheath, or similar protection. We agree the provisions regarding reliance on a medical examination and the need to take reasonable steps to minimise the risk of STIs should apply to individual sex workers and clients as well as operators.

Health and Safety in Employment—new clause 6B

The Health and Safety in Employment Act 1992 is a key aspect of the legislative framework that aims to protect workers. The provisions of this Act already apply to the sex industry. However, we recommend this is highlighted by including a new clause (new clause 6B refers) affirming that nothing in the bill limits the application of the Health and Safety in Employment Act 1992, or any regulations or approved codes of practice under that Act.⁷

⁷ The Ministry of Health does not collect STI data by occupational groups, so it was unable to advise us on the rates of disease amongst sex workers. However, based on the experience in both New South Wales and Victoria, the ministry has no reason to believe that STI rates are higher in sex workers than in the general population. In fact reports show decriminalisation there has been accompanied by a dramatic and sustained decline in STI rates in the 'indoor' sex industry (brothels, escorts and private sex workers) (see PRB/H/5 for more information on this).

Guidelines

Each year the Occupational Safety and Health Service (OSH) draws up a work plan. The planning process includes considering if any industries should receive special attention. Placing an industry in this category is made after assessing a number of factors: knowledge of the extent of harm occurring in the industry; the newness of the industry; the passage of new legislation that may affect an industry; and emerging issues in the industry.

A guideline is more or less equivalent to a Code of Practice but has not been approved by the Minister or gone through such an extensive consultation process. Many of the employers, principals and workers in the sex industry are conscious of their health and safety obligations and it is likely they would be willing to co-operate with OSH in the development of a more formal statement of these obligations. Once the guideline is published it could stand to influence practice and be used by OSH to assess compliance. The guideline might also be useful for a court when judging whether or not ‘all reasonable steps’ were taken to meet health and safety obligations. The guideline would be available to OSH to use in both reactive (responding to complaints and questions) and proactive work (visits to workplaces to give advice and assess compliance). A majority of us including the ACT and National members strongly encourage OSH to develop a formal guideline.

Prohibiting and regulating offensive signage—new clause 6C

Local authorities currently have the ability under the Local Government Act 1974 to make bylaws concerning signs. Section 684(1)(15) of that Act provides for the regulation, control, or prohibition of the display of advertising. However, the Act does not explicitly consider the content of signage and we do not expect the local government reform currently underway to alter this position. In a decriminalised environment, it is possible that signs advertising businesses of prostitution may become more prolific and more explicit about the services provided by that business. In considering the issue of whether local authorities ought to have the power to regulate signage for prostitution, we discussed the fact that businesses other than those offering commercial sexual services might include offensive content on their signs and that it was possibly out of step with the purpose of the bill to target prostitution in this way.

However, we all want to go some way towards addressing the concerns of some submitters and conclude local authorities ought to have the ability to regulate or prohibit offensive signage advertising commercial sexual services. The bylaw-making power may apply throughout a district or part of a district and councils may make different provision for different parts of a district. However, local authorities must take into account the interests of businesses of prostitution, because a business that is not illegal has a right to advertise its services, and it would be contrary to the spirit of the bill to prohibit signage altogether.

Limits on conduct and location of prostitution

The bill is silent on planning matters relating to the sex industry. Therefore, all planning issues are governed by the Resource Management Act 1991 (RMA) and district plans made under that Act. The explanatory note to the bill states ‘the provisions of the Resource Management Act 1991 remain to address any potential nuisance caused by the siting of a sex work venue’.

The definition of environment in the RMA includes those social, economic and cultural conditions that affect people and their communities, and it also includes amenity values. Some submitters state the advantages in controlling land use through the RMA are that it is democratic and allows for differences in perception and priorities between communities. These submitters argue that, if required, rules regulating prostitution could be made on the grounds that it is affecting social conditions, or it is affecting the amenity values in a particular place.

Others do not agree. These submitters note the focus of the RMA is the environment and not social issues or moral values. Its purpose is ‘to promote the sustainable management of natural and physical resources’. The Act is not about controlling people and activities, but the effect of the activities on the environment. This gives rise to questions regarding the adequacy of this Act to deal with issues surrounding the conduct and location of prostitution. Their conclusion is that this Act is not well suited to address social impact concerns raised by certain aspects of prostitution.

A majority of us consider the RMA, along with the District Plan of a local or territorial authority, is sufficient to control undesirable prostitution activity and planning matters relating to the sex industry. We do not support amendments aimed at creating ‘red light’ zones or

areas prohibiting soliciting. The bill will repeal the offence of soliciting and, under a decriminalised model, it would be inconsistent and risk-creating to create new offences relating to where this can take place. Overt street soliciting in New Zealand is largely confined to four or five relatively small areas in Auckland, Wellington and Christchurch. We do not agree decriminalisation will see such an increase in soliciting that it warrants imposing zoning restrictions or prohibitions. We would suggest that if soliciting activities reach a level of constant and ongoing harassment, the offences of offensive and disorderly behaviour in the Summary Offences Act 1981 could be widened or those of intimidation, obstructing a public way, or indecent exposure currently in that Act could be used.⁸

In addition to these offences there are offence provisions in both the Harassment Act 1997 and the Crimes Act 1961 that could be used in this context. Sections 125 and 126 of the Crimes Act make it an offence to do an indecent act in a public place, and to do an indecent act with the intent to insult or offend any person.

Other members of the committee, however, disagree. These members support amendments that will allow communities to have the ability to limit the conduct and location of prostitution. These members believe the RMA will not be able to control the location of brothels, soliciting or nuisance activities such as discarded used condoms in gardens. These members note that all the Australian states that have decriminalised prostitution have retained some control over street soliciting.

By a majority, we recommend there be no provisions in the bill that limit the conduct and location of prostitution. However, as we discussed at length the type of regulations (by-laws) that might be used to limit or control this activity, we agree this material should be included in our report. We think the House should have this information so that a member who wishes to propose an amendment enabling local authorities to have this power has the benefit of our consideration. This discussion appears later in the report.

Protections for sex workers—clause 7

Clause 7 makes it an offence to coerce any person into either providing commercial sexual services or surrendering the proceeds of any commercial sexual services. The majority of submissions that refer

⁸ Sections 3, 4, 21, 22 and 27 refer.

to this clause support it. Several give examples of the ‘common-place’ practice of coercion in the sex industry. Those who oppose it are generally not supportive of the bill itself. One submitter believes coercion to be intrinsic to prostitution and that this will not change with the enactment of this bill.

Coercion has been inherent in prostitution and, while a majority of us believe this will be reduced, it is unlikely to occur overnight. A majority of us agree this clause is important because it deals with a problem recognised in the industry and sends out the message that coercion is not acceptable. This is a core point of difference amongst committee members and these differences are explained more fully in the minority views attached to this report.

Some submissions suggest an amendment to the clause reflecting that coercion can be caused not only by individuals, but also by groups, companies or bodies. We would note that ‘person’ covers bodies corporate, companies and unincorporated bodies as well as individuals so no amendment is required to deal with this issue.

Prohibited acts

We recommend that instead of listing a range of behaviours and defining ‘coerce’, clause 7 should focus attention on the coercive behaviour. We recommend the clause is amended to prohibit specified activities if done with the intent of inducing or compelling a person to provide a commercial sexual service or to provide their earnings from such a service. Coercive behaviour, therefore, is any explicit or implicit threat or promise that a person will:

- improperly use to the detriment of any person any power or authority arising out of an occupational or vocational position held by that person or any relationship between those persons
- commit an offence that is punishable by imprisonment
- make an accusation or disclosure (whether true or not) regarding offences committed by a person, misconduct likely to damage a person’s reputation, or that a person is in New Zealand illegally
- supply, or withhold supply of, any controlled drug within the meaning of the Misuse of Drugs Act 1975.

Some submissions raise concerns that the penalty for this offence does not reflect the severity of the offence and does not fit in with provisions in the Crimes Act 1961 (particularly the penalty for

inducing sexual connection by coercion). We recommend the penalty should be increased to 14 years' imprisonment (this is consistent with section 129A of the Crimes Act 1961).

Right to refuse to provide commercial sexual services— clause 8

We recommend this clause be redrafted to clarify the protections it provides. Clause 8 applies to those who personally provide commercial sexual services.

- Subclause (1) means that regardless of what a contract contains any person may refuse to provide or continue to provide commercial sexual services.
- Subclause (2) means that the fact that there is a contract for commercial sexual services does not of itself mean that consent cannot be withdrawn in terms of the criminal law.
- Subclause (3) preserves the contractual rights of persons entering into contracts for commercial sexual services to seek remedies if the contract is not performed.

The majority of submissions that refer to this clause support it. These submitters believe it equalises the power imbalance between sex workers and their clients and management, it recognises the right to choose without fear of reprisal, and gives sex workers power and ability to make choices about bodily integrity. Submissions that oppose the bill point to this clause as a reason why prostitution cannot be seen as just another industry.

One submission states there is a need to address the matter of payment for services in this clause. It states there is no system for settling the financial implication of a cancellation of the contract. Many submissions make suggestions for amendments concerning the relationship between this clause and the offence of sexual violation. These submitters suggest the clause would be improved by express reference to the element of lack of consent that is part of the offence of sexual violation.

A majority of us consider the bill will enable enforcement of current employment legislation within the sex industry, and as such will assist in safeguarding the rights of sex workers and provide legal protection from exploitation. In this respect, we agree sex work is not just like any other industry. Every person has the right to refuse to give consent and withdraw consent, but the lack of such consent in the sex industry can lead to the offence of sexual violation being

committed. While much legislation can be applied to this industry, there is a need for some measures and controls to protect those working in the sex industry. This clause is one of them.

Entitlements not affected—new clause 8A

Beneficiaries subject to the work test are to be available for and take reasonable steps to find suitable employment. This is defined as ‘employment that the chief executive is satisfied is suitable for the person to undertake’.⁹ Under section 102(2)(b) of the Social Security Act 1964 beneficiaries are required to accept any offer of suitable employment. There were concerns from some submitters that if prostitution were decriminalised, beneficiaries may be told by some State agencies they would be required to do sex work or lose their benefits.

The Ministry of Social Development advise us ‘it is unlikely that the chief executive would, or could ever consider prostitution to be suitable employment. It would be unacceptable politically, and there is a moral dimension that would also make it unlikely that a court would ever say that such a classification was legally acceptable.’ This view was supported by the then Department of Work and Income who added ‘there would not even be the suggestion beneficiaries would be required to do sex work or lose their benefit’.

Despite this assurance, we condemn any suggestion that in decriminalising prostitution, sex work can be considered a suitable vocation or employment option. We find abhorrent the idea that beneficiaries could be advised that prostitution is an acceptable employment option by State agencies. Equally abhorrent is the prospect that refusal by a beneficiary to consider sex work as suitable employment could result in the loss of benefits. To emphasise this, we recommend the insertion of a new clause which clearly states that refusal to undertake sex work or to continue to work as a sex worker, will not affect a person’s entitlements under either the Social Security Act 1964 or the Injury Prevention, Rehabilitation and Compensation Act 2001. This would apply to a general refusal to undertake sex work rather than a refusal of a particular job or at a particular time.

A majority of us see this provision as assisting those sex workers who have a genuine desire to leave the industry. We understand from the Ministry of Social Development that a person faces a stand

⁹ Section 3(1) of the Social Security Act 1964.

down period of between one and ten weeks before a benefit commences. The actual stand down period is calculated according to the person's average income over the prior 26 weeks and the number of any dependent children involved. This would continue to apply to a sex worker who wants to exit the industry. The effect of new clause 8A, however, would mean the non-entitlement period (currently 13 weeks) which can be imposed when a person 'becomes voluntarily unemployed without a good and sufficient reason' would not be imposed. The new clause also prevents a non-entitlement period or other sanctions being applied for a failure of the work test obligations due to a refusal to undertake sex work.

A number of submitters raised with us the issue of providing financial assistance to organisations to assist sex workers to exit the industry. Because of the budgetary implications of such an amendment, we can only recommend an enabling provision. There would be no obligation on a government agency to make any such funds available. We do not consider this would be helpful and, instead, we recommend the Prostitution Law Review Committee consider and report on the nature and adequacy of the means available to assist people to avoid or exit sex work. In addition to this, we strongly recommend the Government considers what more can be done, either through a reform of the benefit system or by other means, to assist people to avoid or cease working as sex workers, particularly young persons in the 16 to 18 age group.

No provision of commercial sexual services by children—Clause 9

One aim of the bill is the protection of persons under the age of 18 years from exploitation in relation to prostitution. Clause 9 creates offences in relation to child prostitution and would be enhanced by the Police having some power of entry.

The majority of submissions that refer to this clause support it. There is concern expressed in several submissions that this clause will not affect the existence of child prostitutes or their continued involvement in prostitution. Some submitters argue that the risk of danger and exploitation increases with the age restriction because this group of sex workers will be further marginalised and have less access to safe sex education and support. Some submitters believe that evidence to enforce this clause will be difficult to obtain.

Some submitters have concerns about the age of clients, stating that it should be illegal for a purchaser of sex to be under 18. Other

submitters object to clause 9(6), which provides protection for the child from being charged as a party to an offence committed upon that child. These submitters are concerned that prostitutes who have 'chosen' sex work are not liable for their actions and that some children willingly enter the sex industry and wilfully break the law.

We recommend that clause 9 be replaced with new clauses 9 to 9C. In order to amalgamate provisions in the law relating to child prostitution, we recommend that section 149A of the Crimes Act 1961 be repealed and its provisions inserted into the bill. Subsequent to this, we recommend the penalty set out in clause 9(4) remain at seven years. While a five year penalty as contained in section 149A of the Act is consistent with other offences relating to prostitution and the overall sentencing framework, we believe a seven year penalty reflects the seriousness with which we view child prostitution.

We agree with submitters that the offences described in clauses 9(1) to 9(3) be extended to include encouraging or facilitating in the provision of commercial sexual services by a child.

It is desirable that we allow professionals to provide as much assistance to young people involved in prostitution as possible without the fear of prosecution. We recommend that clause 9(5) be amended to include the provision of legal advice and medical services (now clause 9C(2)).

Although some children may seem to have entered the industry by choice, it is questionable how 'free' that choice actually is in many circumstances. Therefore we agree that children should not be subject to criminal charges under the bill, and do not recommend any amendment to this clause. We note the difficulty the Police have under current law to deal with young persons between 16 and 18 years old. Under section 48 of the Children, Young Persons and their Families Act 1989, the Police can remove under 17 year olds from certain situations without a warrant. Sections 39 and 40 of that Act also allow the Police to remove under 17 year olds from situations likely to be detrimental to them if the Police have a warrant.

Several submissions take issue with clause 9(7), but for different reasons. Some submitters believe the onus for any offence should not be automatically placed upon the client, that it is unfair as it is often not possible to be sure of age, and the sex worker may deliberately mislead. Some submissions recommend the offences relating to children be brought more in line with general criminal law principles and note that clause 9(7) creates a strict liability offence, which

is controversial in this area. They argue the offence is out of line with the defence in section 149A of the Crimes Act 1961 and provisions in the New Zealand Bill of Rights Act 1990, and should be amended to allow the defence of reasonable belief. Some submissions support the inclusion of an absolute liability offence. Another submitter suggests establishing a range of penalties in relation to clause 9 to create a sliding scale in respect of different age bands.

Consistency with New Zealand Bill of Rights Act 1990

The Ministry of Justice (the ministry) provided advice to the Attorney-General on the consistency of the provisions in clause 9 with the New Zealand Bill of Rights Act 1990 (BORA). The ministry stated that clause 9(1) to (3) are a prima facie breach of section 19 of BORA because the provision creates the anomalous situation that 16 and 17 year olds are prohibited from providing commercial sexual services when, in other circumstances, they are legally of age to consent to sexual activity. However, it concluded the inconsistency of these subclauses is reasonable and justifiable in terms of section 5 of BORA. The ministry also drew attention to clause 9(7), which creates an offence of absolute liability. While not inconsistent with the letter of BORA, the ministry's advice is that it breaches the spirit of this Act and of criminal justice matters in general. It suggests an alternative provision that provides for a defence of reasonable belief.

By a majority we recommend that the offence of absolute liability should remain. This would mean the onus would be on the client to ensure the sex worker was 18 years or older. In the event a charge was laid it would be the client's responsibility to disprove the charge and the young person involved would not be required to refute the client's evidence in court. Retaining a strict liability offence would send a strong message to those who try to involve young persons in providing commercial sexual services.

Compliance with health and safety requirements: a power of inspection

Compliance regimes must be relative to the public health risk. While we support a model of 'self auditing' that places emphasis on health promotion and health education, with input from public health services as needed, we agree the bill must provide for the enforcement of the health and safety requirements in the bill. As stated elsewhere in this report, our focus has been on health promotion and education.

For these reasons we agree the Ministry of Health (the ministry) should take responsibility for enforcing these provisions and we recommend new powers to enter and inspect for compliance to enable it to do so. This should include allowing only designated or authorised persons to exercise the power of entry, and these people must carry proof of appointment and identity. We agree the ministry should not be required to give notice of its intention to inspect premises as this could prejudice the purpose of any investigation.

This process would keep contact with the Police at a minimum as the ministry would be responsible for enforcement. It would be up to the ministry to investigate and prosecute (although this would not prevent the Police from also taking a prosecution). Nothing in this clause would prevent an inspector passing information to the relevant agencies if he or she suspects offences are being or might be committed.

A Police power of entry

In order to enforce the provisions relating to prostitution of persons under 18 years of age in clause 9, we recommend the bill is amended to include a Police power of entry with warrant. The primary justification for providing for Police entry into a place is to detect if persons under 18 years of age are working there. Without this provision, if the Police receive information that someone has committed an offence against clause 9 and there is reasonable grounds to believe there is evidence of that offence at a particular place, a search warrant could be obtained under section 198 of the Summary Proceedings Act 1957 to search for and seize that evidence. This is problematic in respect of offences against clause 9 as there is unlikely to be evidence of the offence that can be seized. The Police currently have a power of entry under the Children, Young Persons, and Their Families Act 1989, but only in relation to children aged up to 16 years.

The recommended new clauses state that a District Court Judge, Justice, Community Magistrate, or Registrar of a District Court may issue a warrant to enter a place if he or she is satisfied there is good cause to suspect an offence against clause 9 has been, is being, or is likely to be committed in the place and there are reasonable grounds to believe 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. The clauses set out the form

and content of the warrant, the powers conferred by the warrant, and the requirements when executing a warrant.¹⁰

Evidence of age and record keeping

We have recommended an amendment to include a Police power of entry with warrant. Under this proposal the Police will have no powers to demand identification details from young persons. This means young persons will not be required to give details of their age to the Police if questioned. We agree the onus in this situation should be on the operator not the sex worker to prove the age of the sex worker. This retains the status quo (that is, there is no specific obligation to obtain and keep these records). We believe any responsible operator would take precautions to ensure underage people are not providing a commercial sexual service. It would be in the interests of the operator to be able to show that all those providing commercial sexual services for the business are over 18 years old.

Keeping records of sex workers

Some newspapers that publish advertisements in ‘personal’ or ‘adult entertainment’ columns require confirmation from the Police that the person who wants to advertise is a genuine sex worker over 18 years of age. The normal practice in these cases is for the newspaper to refer the person to the Police.

In some places this practice has been instigated by newspapers that have contacted the Police seeking assistance in managing some of the advertisements. In other places the practice has been instigated as a result of local policing initiatives. Some newspapers do not require verification and not all Police Districts maintain these records.

The Police believe this practice is advantageous as it provides an opportunity to advise sex workers about relevant laws, support services and health and safety issues, particularly their own personal safety. It also assists in opening up lines of communication with the Police, and who in the Police they can contact if they need advice or become a victim. These records are usually maintained in conjunction with information Police obtain under the Massage Parlours Act 1978. The information the Police collect as a result of this practice assists in the investigation of crimes committed against sex workers

¹⁰ This provision will require a three month delay to the commencement date of the Act to enable regulations to be made under this section.

or by sex workers and helps prevent persons under 18 years of age from advertising sexual services.

We received a number of submissions that argue the Police should not be able to maintain lists or records of sex workers. Concerns were raised about recording and retention of this information, confidentiality, and destruction of records when the sex worker exits from the industry. Submitters also raised concerns about the ad hoc nature of this practice. As a result of some of the concerns raised, the Police advised they had implemented an interim policy to address these issues pending the outcome of the bill.

We acknowledge the Police rely on information about people in order to solve crimes and it is important the Police are not prevented from lawfully collecting information. However, we do not consider the Police have convincingly justified the continuance of this practice, particularly as it does not occur nationally.

We agree the practice should be discontinued (and where these records are kept separate they should be destroyed) as there are other ways the Police can collect information on the sex industry. There is nothing in the bill that prevents the Police from continuing with their normal intelligence-gathering activities. We believe the Police should advise newspapers they no longer record details of sex workers for these purposes. In our view newspapers can develop their own ways of identifying fraudulent advertisements or underage advertisers.

We expect that in a decriminalised environment sex workers will have more confidence about approaching the Police if they have concerns about relevant laws, support services and health and safety issues.

Youth involvement: assistance and support for children under 18 years

Many submitters made comments regarding services that need to be put in place to help younger people. The reasons people get into prostitution are complex, but frequently involve the need for money. It is important to recognise the difficulties that exist for young people in supporting themselves if estranged from their families. We agree 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.

A number of submitters who commented on this issue were concerned that the effects of reform might be negated if a number of issues are not addressed with respect to resourcing, protection and the development of services aimed at meeting the needs of the under 18 age group. The Commissioner for Children recommends a comprehensive approach involving statutory and community-based welfare services, health providers, Police, youth workers, and education. Some submitters feel the Government needs to make a link between financial hardship and sex work, and reinstate the emergency unemployment benefit as well as re-examine the criteria for access to benefit entitlement for young people.

In this context, it is important to remember that while underage sex workers will not be committing an offence their clients will. This may have the effect of pushing these sex workers underground as their clients demand more secrecy. This in turn would impact negatively on the safety and vulnerability of these sex workers.

Benefits available to 16 and 17 year olds:

- independent youth benefit (single, without children and not able to rely on parental support)
- unemployment benefit (if married and have one or more dependent children)
- unemployment benefit—emergency benefit (students during holidays on grounds of hardship, sole parent or attending a social rehabilitation programme)
- student allowance (if married or supporting a child or children)
- student allowance—independent circumstances allowance (single tertiary students in special circumstances).

As we noted earlier in this report, we recommend the Government considers what further support can be made available to assist young persons to avoid or cease working as sex workers.

Repeals—clause 10

Clause 10 effectively decriminalises the sex industry by repealing the key statutory and regulatory provisions. The majority of submissions that refer to this clause support it.

Some submitters who do not support the repeals are concerned that there will be a lack of control over the sex industry, particularly in relation to soliciting and the location of brothels. Some submitters

believe it is unwise to repeal sanctions until the wider implications of accepting prostitution as like any other business are addressed. A number of submitters are concerned about the implications for advertising and signage following decriminalisation.

Other submitters express support for the repeal of the Massage Parlours Act 1978 because it inappropriately connects therapeutic massage with the sex industry. Some submitters believe the Act should remain, but be amended to license any sex premises and make licensees responsible for safer sex practices.

We believe that our proposal for the establishment of a review body (see below) will provide a sound platform to assess the impact of decriminalisation on the sex industry in New Zealand. The review body will consider the desirability or otherwise of additional controls on the location and conduct of prostitution as part of its report. This assessment will be based on research undertaken within five years of the commencement of the Act and should therefore reflect the reality of the decriminalised prostitution environment in New Zealand.

Those of us who support amendments enabling local communities to limit the conduct and location of prostitution believe our proposals as discussed later in the report would go some way to assuaging the concerns of submitters over the repeal of the Acts and provisions listed in clause 10.

Transitional provisions for past offences—clause 12

Once the Act is in force, we do not believe a person should be convicted of offences against any of the enactments repealed in clause 10 that were committed before the new law commences. Therefore, we recommend new clause 12 be inserted to provide transitional provisions in respect of these offences. This provision does not apply to offences committed against section 149A of the Crimes Act 1961 (relating to prohibitions on child prostitution).

Review of the Act—new clause

We recommend a review body (the Prostitution Law Review Committee) is established to assess the effectiveness of the reforms we have proposed. Once established, it should report to the Minister between three and five years after the commencement of the Act. The primary purpose of the review committee would be to monitor and review the operation of the Act and we recommend that the

Minister present its report to Parliament. We recommend that it report specifically on the:

- impact of the legislation on the number of sex workers and other matters relating to sex workers or prostitution
- desirability or otherwise of introducing limits or controls on the location and conduct of prostitution or licensing of sex workers or persons who operate businesses of prostitution
- nature and adequacy of the means available to assist sex workers to avoid working in or exit the sex industry
- need for further amendments, including repeal of the legislation.

The membership of the review body should be made up of the nominees of the Ministers of Health, Justice, Police, Women's Affairs, Youth Affairs, Local Government and Commerce (for sex industry representatives) as well as representatives from the New Zealand Prostitutes Collective.

We note the paucity of robust data on the numbers involved in the sex industry in New Zealand. We have appended to our report part of the June 2001 assessment of the New Zealand vice scene by the Police. The assessment stresses that it does not purport to provide any accurate quantitative measure of the total number of sex workers and businesses. The New Zealand Prostitutes Collective confirms the lack of qualitative information about sex workers. The review body must, therefore, establish as soon as possible baseline data so that a worthwhile statistically robust comparative study can be made within the review timeframe.

Certification (licensing)

The committee spent considerable time discussing the issue of whether or not to amend the bill to include a licensing or certification regime, but was unable to agree to amendments. The majority of us believe that licensing is ineffective since individuals targeted by it can hide behind others and risks in the industry concentrate in the unlicensed sector. Some workers are exploited under the current legislative framework because prostitution is illegal. In a decriminalised environment these workers are empowered and there are mechanisms in the bill relating to coercion and contracts that give added protections. On the other hand, some of us believe a limited licensing regime will be complementary to the health and safety aims in the bill.

While there is a limited consensus in the submissions about whether prostitution should be decriminalised, there is general agreement that the industry is potentially harmful to vulnerable people. There is widespread support for ensuring that greater protections are provided to sex workers. There is some support for a form of legalisation or regulation instead of decriminalisation. Submitters who support this view believe decriminalisation on its own is not enough and will not be conducive to sex worker safety. These submitters suggest a licensing system similar to that of the liquor industry. Some form of licensing, they argue, would provide a mechanism for ensuring unsuitable people are not in positions of control in the industry, premises would be available for inspection and enforcement of controls would be easier.

The key rationale given in support of a licensing regime is to restrict who may operate a business of prostitution. This is to ensure that those in control of workers are suitable for the role, and to help keep organised crime groups, criminal entrepreneurs and other criminals out of the commercial sex industry. The Massage Parlours Act 1978 provides a partial certification regime and the Police advise us that it has been effective in keeping out those seen as undesirable to operate such businesses. However, a licensing regime that extends to all those with control over sex workers would mean that many operators and workers not currently required to obtain licences under the Massage Parlours Act 1978 would be caught in the net, and some of us believe this is contrary to the spirit of the bill and could undermine the rationale of decriminalisation.

Despite our inability to reach an agreement on this issue, we discussed at length the type of licensing regime that might be included. We believe it is important the House has this information so that a member who may wish to propose an amendment along these lines has the benefit of our consideration. Because of the negative connotation that licensing conjures up in respect of prostitution, we refer to the regime as certification. We set out below the features of a certification system and an outline of the fitness of character test. We also set out two options for whom the requirement to be certified should apply. The reasons for the two options are also set out below.

Features of a certification regime

A certification regime should be simple and straightforward. It should not be onerous or expensive as this may discourage compliance. Extending it to factors other than disqualifying convictions leads to a more complex regime.

Basing the fitness of character test on previous convictions (except for prostitution-related offences) is a clear, objective measure forming a solid basis for the test. For this reason we have rejected the idea of a wider fitness of character test which might include general requirements as to appropriate character alongside a list of prohibited convictions. The criteria proposed to get certification should be open, transparent and related to the reason for having a certification regime—namely the protection of sex workers. A person should be entitled to a certificate (as of right) if he or she has no disqualifying convictions. Disqualifying convictions should include offences involving violence, sexual offences, drug dealing offences and arms offences and the offence of participation in a criminal gang.

If a person has a disqualifying conviction, he or she may still get a certificate if approved by the District Court. This approval would be based on matters such as the time elapsed since the offence and the circumstances surrounding the offence.

The certificate should be for a set period of time, perhaps five years, and there should be the power to automatically revoke a certificate following a disqualifying conviction.

The District Court should issue the certificates. This would keep costs low and parallel other licensing regimes. The District Court also has previous experience with licensing under the Massage Parlours Act 1978.

Issues for consideration

We agree sex workers working by themselves or in a collective with other workers (where none of those workers has control over the other workers) should not be required to obtain a certificate. However, we considered two options for defining who should be certified beyond this.

- The first option is to require *all* those who have control over the working conditions of one or more sex workers in all businesses of prostitution to obtain a certificate.

- The second option is to require those who have control over the working conditions of *four or more* sex workers to obtain a certificate.

The benefit of the first option is that there is less opportunity for a two-tier system to develop and the goal of protecting workers applies regardless of the number of workers a person in a position of authority has control over. It could be argued that the threshold of four workers in the second option is an arbitrary figure.

Enforcement of a certification regime

The issue of enforcing a certification regime remains unresolved and we did not discuss this in any depth. We could not agree if this was a role for the Police or some other agency. Nor could we agree if such a regime should be managed in a proactive or reactive manner.

Some of us are of the view that if the Police are responsible for enforcement it will create a Police obligation to go into all sex premises. Others note Police involvement might provide the Police with an opportunity to build up a relationship with the industry, particularly with regard to underage prostitution. However, the focus of the bill is on improving the occupational safety and health of sex workers and, as such, it might be more appropriate for the Ministry of Health and/or Occupational Safety and Health Service to undertake this role.

Limits on conduct and location of prostitution

Several submitters sought amendments to the bill to limit the conduct of street soliciting and the location of both brothels and street soliciting. They do not believe the Resource Management Act 1991 and other legislation will adequately deal with the community's concerns over the 'nuisance' elements of active street soliciting, where it takes place or where brothels can be located.

Conduct of street soliciting

As already noted, the bill repeals the offence of soliciting. Many submitters believe this offence should not be repealed. Some believe that with repeal, street soliciting will become more frequent and overt, and may take place in places that are considered unsuitable such as near private dwellings, schools, churches and places frequented by children. Other submitters, however, believe soliciting will not be a problem in a decriminalised environment because the

number of sex workers on the streets will decrease due to other options being available.

For the reasons set out in the introduction to this report, we support decriminalisation of prostitution, and this requires the removal of offences relating to the ability of sex workers to seek customers. However, a minority of us are concerned about the manner in which this is done and do not believe the current harassment and nuisance-type provisions in the Summary Offences Act 1981 are sufficient to address active ‘hard sell’ soliciting.

A minority of us wanted the bill amended to provide that no street prostitution in any public place may cause a nuisance. The provision would apply equally to sex workers, their clients, and anyone acting for workers or clients. The recommended penalty for contravening this provision should be a fine not exceeding \$2000.

Location of street soliciting and brothels

A minority of us believe also a territorial authority should have the power to apply a soliciting prohibition to a public place and for it to be an offence to continue to solicit in this place once the bylaw is in place. There should also be a power of arrest for any breach of this or the nuisance prohibition. Those of us of this view do not believe soliciting prohibitions should apply to commercial sexual services that are offered, invited or accepted by telephone, in writing or by electronic means or which take place in a brothel.

Although a minority of us agree territorial authorities should have the power to apply soliciting prohibitions, we recommend there be limits on this power. As noted above it would be contrary to the spirit of this bill if territorial authorities could prohibit all prostitution activity in their areas.

A minority of us believe communities should have the opportunity to limit the conduct and location of prostitution. We considered whether this is best achieved by central control—explicitly setting out the controlling provisions in the bill, or local control—amending the bill to include bylaw-making powers for local authorities relating to the location of businesses of prostitution and soliciting. Our conclusion was the former approach would require arbitrary rules regarding both the distance that businesses of prostitution or street prostitution could be situated from certain defined places and the list of defined places. We instead favour leaving these decisions to local authorities, who can consult their communities to ascertain firstly

whether limits on prostitution are desired, and secondly, in which locations the industry is most appropriately located, or not located. Most of us oppose the creation of such powers, which run the risk of being used by Police and others in a way that creates de facto criminalisation. The extent of street soliciting in New Zealand is limited, both in the areas where it happens and the numbers of workers involved. Few submitters provided tangible evidence of the actual harm caused by such activity.

A minority of us recommend that where a territorial authority applies a soliciting or brothel prohibition it must have regard to the interests of the sex workers, clients and businesses of prostitution in the area under consideration. It must also have regard as to whether the area has customarily been used for soliciting or brothel activities. We believe this gives the territorial authority the flexibility to 'clean up' an area if that is the wish of the community. In applying any such prohibition a territorial authority must use the special consultative procedure set out in section 716A of the Local Government Act 1974. This is a costly and time consuming process and we are confident local and territorial authorities would not institute this lightly and such an action, therefore, would be in response to a major concern. We would hope these proposals, if adopted, would encourage local and territorial authorities to develop a responsible prostitution policy for their areas.

We recommend also that no large brothels should be permitted in a prohibited area (that is, a brothel with four or more sex workers), unless such a brothel was in existence before the public notice was given of the proposal to apply the brothel prohibition.

Most of us oppose the granting of such powers to local authorities since it runs the dual risks of creating conflict over such matters and also the creation of an illegal brothel industry. The committee received little evidence that current brothel location caused genuine and widespread offence, and virtually no justification for what would constitute significant undermining of the principles of the RMA.

**1999/0174 Petition of VM Newman and 17 others
1999/0171 Petition of Anthony de Vega, on behalf of the
Society of St Vincent de Paul**

The committee was referred two petitions, both requesting that the bill be defeated. A majority of us recommend that the bill proceed with amendments, and therefore, by a majority, do not support the petitioners' request for the reasons outlined in this report.

Minority view of National Party members

The vote on the bill is a conscience vote for National Party MPs. Some MPs supported the introduction of the bill but are now concerned at the extensive changes made to the bill in the course of the select committee process.

The National members of the committee do not support the bill. Rather than challenge the detailed wording of the commentary their concerns can be summarised as follows:

- The legislation can be seen as promoting prostitution as an acceptable profession.
- There is evidence that decriminalisation leads to a growth in prostitution.
- If it is appropriate to implement value systems by legislation, the law should be changed to criminalise the clients of prostitutes. Such legislation could be patterned on the law change in Sweden in 1999.
- It is inappropriate for the Courts to become involved in determining the rights of parties to contracts for commercial sexual services if the individual contract is not performed.
- There are already sufficient powers in other legislation to deal with relevant health and safety issues. We note for example the comment by the Labour and Green members of the committee that the provisions of the Health and Safety in Employment Act already apply to prostitution activity.

Minority view of New Zealand First member

New Zealand First opposes this bill in its entirety. If it becomes law it will:

- provide for the setting up and the operation of brothels

- allow the procuring for financial gain a woman or a man to have sexual intercourse with a third party (this is commonly known as pimping)
- allow for living off the earnings of prostitution
- remove the section of law that makes soliciting an offence.

As a result of bringing in such legislation and liberalising the ‘activity’ the problems associated with prostitution will become more serious. With this bill we can expect:

- the ‘industry’ to expand
- more drug abuse
- more child prostitution
- more sexual activity leading to an increase in sexually transmitted diseases
- more trafficking of women
- more violence against prostitutes
- more blatant advertising for both the services provided and the recruitment of prostitutes
- a disproportionate number of Maori will become involved
- more criminal activity.

Wherever in the world, including Australia, the laws governing prostitution have been liberalised the activity has flourished.

It is generally accepted that prostitution cannot be abolished. However, removing the Police from controlling and monitoring it will open the door for organised crime to become far more involved.

At one point the committee considered allowing local councils the ability to zone areas and stipulate where the activity would be allowed. This at least was a move to control the activity. However, the majority of the committee then decided that such zoning was unacceptable. This will effectively open the door for the activity to occur wherever. As a result we can expect cast off materials to be found anywhere, from parks to railway stations from alleyways to church grounds. Additionally we can expect attempts to be made to sell the services of prostitutes at public events and happenings anywhere the public assembles. At times the selling will be done by the prostitutes themselves. However, more often than not it will be undertaken by ‘pimps’. Worse still, we can expect potential clients of prostitutes to inquire from innocent people (mainly young

women) 'how much' for various sexual services. All such activity will be perfectly legal if not socially acceptable.

Prostitution is about one human being buying another, often from a third party, for sexual gratification. The more that prostitution is liberalised the more competitive it becomes, compelling women, in the main, to perform more and more degrading acts for ever decreasing fees.

If this bill becomes law there will be a huge surge in recruitment which will result in increased pressure being put on young women in particular to become prostitutes. In addition there will be an increase in the importation of Asian women into the country to service the 'prostitution industry'. Of recent times there have been several reports of clothing workers from Asian countries being entrapped in New Zealand and made virtual slaves. If it can happen in this industry, it will happen in brothels. It is argued that legalising the 'activity', as in Victoria Australia, where brothels are licensed, will allow for some authoritative control but will not stop 'underground' brothels operating. Those with that view tend to prefer the NSW Australia decriminalised model, arguing that it prevents an 'underground' industry existing. However, that is not true. In Australia it has been reported that hundreds of illegally imported Asian women are exploited in NSW brothels every day. These brothels work entirely underground.

- It has been reported in Australia that both the decriminalised (NSW) and the legalised (Victoria) models have had horrendous results. There has been a dramatic increase in all forms of prostitution.
- A vast increase in illegal and street prostitution.
- Less Police surveillance of prostitution.
- Decreasing age of young girls and boys involved in prostitution.
- Increasing demand for younger prostitutes—In 1999 a Save the Children report revealed that despite legislation, at least 3,700 children under the age of 18 were selling their bodies for sex.
- Increased levels of violence and rape against prostitutes.

It was reported in the Australian newspaper on 2 March 2000, that the NSW Police Commissioner, when commenting on 40 shootings in three months in Sydney suburbs, stated 'it was a struggle between

rival groups for control of the drugs and prostitution trades in parts of Sydney.’ A Victorian Police Chief Inspector John Ashby of the Vice Squad once said ‘I suppose there was a utopian view that legalising prostitution would minimise street and illegal prostitution. It clearly hasn’t done that.’

The stated purpose of the bill is to decriminalise ‘prostitution and to create a framework which safeguards the human rights of sex workers and protect them from exploitation, to promote the welfare and occupational health and safety of sex workers. To create an environment which is conducive to provide health and protection from child exploitation in relation to prostitution.’

The problem is the prostitution industry is quite different to any other industry. Everywhere in the world (including Australia) wherever prostitution has been decriminalised/legalised the health, safety and welfare of prostitutes has been compromised.

There is no doubt that prostitution causes grave harm to the majority of those who work as prostitutes. New Zealand First has been informed that in the United Kingdom in 1992 criminologists stated that all prostitutes suffer deep psychological damage as a result of the occupation.

Sandra Coney, probably New Zealand’s foremost advocate for women and currently Executive Director of the Women’s Health Action Trust, is totally opposed to the bill. She states that her organisation is concerned about the unintended impacts the bill will have for women. She goes on to state that it has the potential to work against, rather than for, the people it is intended to assist. Further she states, the most significant health problem prostitutes face is violence and the bill does nothing to address that problem.

New Zealand First is a political party which strongly supports the family and family values. We see the family as the core of our society. Normalising prostitution attacks the very foundations of our society and our families.

Healthy family relationships based on trust and fidelity are ruined by partners buying (or selling) sex. Involvement with prostitution, can lead to guilt, resentment, hatred, abuse, loss of self worth and, ultimately, violence and family break up.

New Zealand First recognises that prostitution will not be abolished. However, this bill will expand the industry. We believe the reverse should occur, that the ‘industry’ should be contained. The focus should be on:

- restricting entry into the ‘industry’
- control and limit where it operates
- implement systems which maximises the health and safety of prostitutes
- implement systems which minimises people’s ability to exploit others
- implement systems which encourages and assists prostitutes to leave the ‘industry’.

We believe, as an initial step, New Zealand should implement legislation similar to that adopted in Sweden. In short Sweden has made it illegal to buy sex. The purchaser is penalised as opposed to the seller. This law has had the effect of dramatically reducing street prostitution.

New Zealand First has a bill in the member’s ballot based upon the Swedish legislation. It has three principal aims, which can be briefly outlined as follows: Firstly, it prohibits the purchase of sexual services (prostitution), secondly, it compels the Government to take measures to ensure prostitutes are encouraged to leave the industry and are in receipt of appropriate care and assistance. Finally it prohibits the publishing of advertisements for acts of prostitution.

This bill is ghastly law and New Zealand First believes it should be totally rejected.

Minority View of ACT New Zealand Member

I expected to be able to support this bill, not least because prostitution is already legal. But after hearing the submissions and officials’ advice I found the bill’s improvements on current law roughly balanced by adverse changes, some of them unnecessary.

The committee then considered the bill through multiple drafts of Parliamentary Counsel. The attitude of the bill’s promoters steered my conclusion. I had thought that we could achieve a straightforward decriminalisation but it became plain to me that the health and safety objectives were secondary to another unstated objective.

I believe the primary goal of the promoters of the bill is to normalise prostitution (it was called destigmatising in discussion). On all the hard issues, like how best to protect young people, and health and safety, and acknowledging some revulsion among ordinary New Zealanders, the goal of normalisation prevailed.

I could support the Bill if it contained a provision along the following lines. Without it I cannot.

“Protection of Freedom of Speech, of Association, and of Religious Expression

- (1) *Nothing in this Act may be taken as an endorsement or as legal or moral sanction of prostitution by the government or the people of New Zealand.*
- (2) *No person shall be restrained by any specified law from, or be liable thereunder, for any otherwise lawful:*
 - (a) *exercise of rights of free expression:*
 - (i) *to oppose prostitution, or the normalisation of prostitution, or the reduction or removal of any stigma that attaches to prostitutes and their clients or to persons who profit from prostitution or otherwise;*
 - (ii) *to persuade any person that prostitution or any form of prostitution is morally or ethically undesirable;*
 - (b) *act designed to discourage or dissuade any person or class of person from engaging in prostitution, or from using the services of any prostitute;*
 - (c) *act designed to prevent a child from engaging in prostitution, or to ensure the prosecution of any person for procuring a child to any act of prostitution;*
 - (d) *exercise of rights or powers as a provider or potential provider of goods or services (including the tenancy or other use of real property) to avoid being connected with prostitution or with the promotion of prostitution, or the normalisation of prostitution;*
 - (e) *public criticism of the identity and prostitution related activities of any person who uses a prostitute or profits from prostitution, directly or indirectly.*
- (3) *For the purposes of this section the specified laws are the:*
 - (a) *Broadcasting Act 1989;*
 - (b) *Employment Relations Act 2000;*
 - (c) *Films, Videos and Publications Classification Act 1993;*
 - (d) *Harassment Act 1997;*
 - (e) *Human Rights Act 1993;*
 - (f) *New Zealand Bill of Rights Act 1990;*
 - (g) *Privacy Act 1993; and*
 - (h) *Any international conventions, treaties or other provisions having effect by reference under any of the foregoing.”*

This would protect rights to express opinions, and to maintain social and economic sanctions, that are both fundamental freedoms, and necessary aspects of a free but healthy society's response to an activity many people will consider to be a social pathogen.

The thrust toward normalisation of prostitution, is shown by the replacement of the simple and clear word "prostitute" which precisely covers commercial sex work as defined, with the euphemism "sex worker". More substantive is the absence of measures it would have contained if the purpose had been to reduce the health and other risks for prostitutes. In particular:

- The majority recite various health and safety desiderata like dealing with coercion, emotional stress, alcohol and drug dependence, child sex. There are no practical machinery provisions to deal with most of these.
- In relation to underage prostitution the age limit of 18 is hypocritical. The police have no practical power to stop even the most calculating 17 year old, providing false identity. He or she is immune from the law while the client and even newspapers who take the child's advertisement have no defence of reasonable belief. If the concern here had been genuine there would have been provisions requiring proof of age, the keeping of registers of proof of age, and rights of entry that did not handicap police in obtaining timely evidence.
- The new clause 8A could encourage prostitution. A person facing the penalty benefit standdown period of 13 weeks for choosing to leave a job need only take some money for sex to duck the standdown.
- In relation to public pestering, previously targeted by the offence of soliciting, the majority do not record the official advice that existing law, including the Resource Management Act do not have effective constraining power. The law has no place in the bedrooms of the nation but it does have a place in restricting lewdness in the public streets.
- In relation to coercion clause 7 is largely repetitive of existing offences.
- The top heavy Prostitution Law Review Committee is an expensive device to persuade people that mistakes in this law will not matter.

Minority view of United Future member

I oppose this bill in its current form.

The aims as stated by the majority report on the Bill are to:

- Safeguard the human rights of sex workers.
- Protect sex workers from exploitation
- Promote the welfare and occupational safety and health of sex workers
- Create an environment that is conducive to public health and welfare
- Protect children from exploitation in relation to prostitution.

I believe not one of the above aims will be achieved through this legislation.

If we are serious about achieving these goals, Parliament should first be commissioning some additional studies similar to Libby Plumridge and Gillian Abel's study from 2001, into the realities of the prostitution industry as it is now, so that any changes can be monitored against good research data.

New Zealand Prostitutes Collective confirms the lack of qualitative information regarding the number of sex workers in NZ, yet boldly claims to represent the best interests of prostitutes. According to NZPC, NZ Herald article, Nov 4th, the majority of prostitutes are employed in massage parlours, yet the Auckland Commercial Massage Operators and adult entertainment owners, and other massage parlour owners have not supported the Bill in their submissions.

I am appalled at the lack of proper studies conducted in the NSW example since as our closest neighbour both geographically and culturally, we should be able to see concrete evidence that shows substantial benefits achieved by their decriminalisation. Instead, the officials report comments that *"there are still a significant number of illegal brothels operating. In 1999 a review of the law indicated there was some community concern about the number and location of brothels and the lack of controls over them."*

A further official report boldly states, *"Decriminalisation of sex work has been accompanied by a dramatic and sustained decline in STI rates in the sex industry"*. But then it refers to studies conducted in 1996, six years ago to substantiate those claims. The truth is more likely found in a 1999 Save the Children report that revealed that at

least 3,700 children under the age of 18 were selling their bodies for sex in Australia.

Australian Federal Police estimates that there are up to 300 female “sex slaves” working in illegal brothels in Australia, mainly Sydney and Melbourne where prostitution is decriminalised and legalised respectively. (One World Net, January 2000)

The reasons for decriminalisation in NSW were driven by the need to address wide spread corruption in the police force rather than healthier working conditions and safer sexual practices of prostitutes. Their law change attempted to place any requirement for regulations under the control of the local councils. However according to reports by the TV One Assignment journalists of the 165 local councils in the Sydney Metropolitan area only four have been willing to address the planning and zoning issues which have arisen as a result of deregulation. Most have refused to allow special areas to be zoned for prostitution and others have zoned in areas that effectively prohibit the establishment of prostitution facilities. The decriminalisation of brothel keeping and street soliciting here in NZ will, in my opinion, lead to quite difficult to resolve issues for local councils, that in have not yet been properly considered.

We should then take a proper look at world trends in addressing the safeguarding of human rights of women and children which is too condemn the purchasing of sexual services. In this regard, New Zealand has already ratified its signing of the UN Convention against Transnational Organised Crime. It is unthinkable that we can be fulfilling our obligations under the Protocol to Suppress and Punish Trafficking in persons, Especially Women and Children, adopted by the UN General Assembly in Nov 2000, and signed by 104 nations, while at the same time we pass legislation that opens our nation to legitimised practices of pimping and street soliciting which is the very environment which invites the traffickers to set up their illegal operations. Section 6 of the UN Convention on all Forms of Discrimination Against Women (1979), which NZ has also ratified, states “Parties shall take all appropriate measures including legislation to suppress all forms of traffic of women and exploitation of the prostitution of women”. Many other nations, including Sweden, France and the US have all made clear their intention to oppose any legislation which might contribute to the increase in the trafficking of women and children for prostitution. While critics have suggested that prostitution has simply gone underground in Sweden, their law change in 1999 which has criminalized the purchaser of

Sexual services has definitely resulted in almost complete eradication of street soliciting and therefore a reduction in the incidence of trafficking and sexual slavery.

One of the issues that has frequently been raised is the injustice of criminalising the seller of sexual services, who in most cases is a female, while the purchaser of sexual services, often a male is able to act without legal consequence. In actual fact, as the majority report clearly states, prostitution is not in itself an illegal activity in New Zealand. Soliciting, pimping and brothel-keeping are illegal activities and I believe it is right to maintain that situation. To address the inequality it is preferable to investigate introducing legislation in some circumstances to criminalise the purchaser of sexual services rather than taking the dangerous step of decriminalisation.

Submitters in favour of the reform mentioned the issues surrounding prosecutions by the police. However, the following table shows the figures for the last five years as supplied by the Police. Given that there are estimated to be approximately 8,000 prostitutes in the country these figures do not reveal widespread police enforcement of the current law, nor extreme harassment.

	<i>Offence</i>	97/98	98/99	99/00	00/01	01/02
2914	Prostitute soliciting	119	79	35	27	19
2913	Living on earnings of prostitution	1	3	3	4	3

I commend the work done by NZPC in giving assistance to prostitutes and believe that whatever gains can be made in improving the sexual health of prostitutes will be achieved by education and encouragement of organisations interested in the welfare of prostitutes and not by hoping that all illegal and exploitative behaviour will stop at the stroke of the Governor-General's pen to enact this new legislation. Ultimately those who choose to take the risks of selling their bodies for money are the only ones who can take responsibility for establishing safe sex practices and their own regular health checks.

At the recent UNESCO Summit on Values many prominent New Zealanders emphasised the need for Parliament to carefully consider the message which it is conveying to our young people. For me it is beyond question that the current bill's message is "prostitution is OK" and that is the wrong message to be sending our young people. In a survey conducted by Colmar Brunton between 23rd October and 4th November 2002, involving 1000 people, 72 percent of those aged under 20 were in favour of a law prosecuting the buyers of sex.

44 percent of women surveyed were in favour while 41 percent were opposed. Amongst non-working people such as students and beneficiaries 61 percent were in favour also.

It is my view that prostitution perpetrates violence against women and, therefore, the Government cannot treat it as regular employment where the Government can obligate an employer to take responsibly for the welfare of the employee.

This law will not be in the best interests of the families of New Zealand and for that reason and many different individual reasons all United Future members will be opposing the bill.

Appendix A

Committee process

The Prostitution Reform Bill was referred to the previous Justice and Electoral Committee on 8 November 2000. The closing date for submissions was 26 February 2001. That committee received and considered 222 submissions from interested groups and individuals and heard 66 submissions, which included holding hearings in Auckland, Christchurch and Wellington. Hearing of evidence took 23 hours 10 minutes and consideration took 27 hours 42 minutes. The current Justice and Electoral Committee of the 47th Parliament has spent 14 hours and 43 minutes in consideration.

Both committees received advice from Ministry of Justice, the New Zealand Police, Ministry of Health, Ministry of Women's Affairs, Ministry for the Environment, and Occupational Safety and Health Service.

Committee membership (of the 47th Parliament)

Stephen Franks (Chairperson) (ACT)

Tim Barnett (Labour)

Russell Fairbrother (Labour)

Darren Hughes (Labour)

Dail Jones (New Zealand First)

Lynne Pillay (Labour)

Simon Power (National)

Mita Ririnui (Labour)

Murray Smith (United Future)

Nandor Tanczos (Green)

Richard Worth (National)

In addition to Tim Barnett, Sue Bradford, Peter Brown, Stephen Franks, and Mita Ririnui, the following were members of the Justice and Electoral Committee of the 46th Parliament for the purpose of considering the Prostitution Reform Bill: Kevin Campbell (Alliance) Janet Mackey (Labour), Nanaia Mahuta (Labour), Dr Wayne Mapp (Chairperson for this item, National), Hon Georgina te Heuheu (National), Anne Tolley (National).

On 18 September 2002 the House gave leave that for the purposes of consideration of the Prostitution Reform Bill, Stephen Franks be chairperson of the committee and Tim Barnett participate as a full member of the committee.

Sue Bradford replaced Nandor Tanczos for this item of business.
Peter Brown replaced Dail Jones for this item of business.
Larry Baldock replaced Murray Smith for this item of business.
On 15 October 2002 Lindsay Tisch replaced Simon Power as a permanent member of the committee.

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Appendix B: Overview of sex industry in New Zealand (by NZ Police) ¹¹

Prostitution itself is not illegal in New Zealand, although many of the activities surrounding prostitution are illegal, making it effectively impossible to work as a prostitute and remain within the law. Several different forms of prostitution operate in New Zealand. These can be broadly separated into three main categories: street prostitution, escort agencies and massage parlours. Other types of prostitution exist outside these three main areas, including self-employed prostitutes working from home, ‘ship girls’, and ‘bar girls’.

Women in prostitution come from the full range of social backgrounds. However, there appears to be some stratification along class and ethnic lines. Lower socio-economic and Maori women are more likely to be employed in situations characterised by lower pay and higher degrees of risk than are middle class and Pakeha women. There are also substantial numbers of Asian women working in New Zealand, with many Thai and Filipina women in particular working in Auckland. These women are particularly vulnerable to exploitation because their often insecure immigration status and lack of English increases their dependency on sponsors. It is a common theme, regardless of the actual method of recruitment, that Asian workers are contracted and financially bonded in various forms to either their employer or the agent or organisation responsible for recruiting them.

Organised crime involvement

Organised crime groups are reportedly involved in many aspects of the sex industry in New Zealand. In many instances this involvement is covert in nature with little public indication as to its extent. Involvement has benefits other than pecuniary advantage such as money laundering, the facilitation and distribution of drugs, networking and partnership opportunities. Often associates of organised crime groups are used as a front to thwart the relevant provisions of the Massage Parlours Act 1978.

The involvement of organised crime groups is more direct in the non-regulated sector of the industry. Members and associates of these groups are commonly involved in the running of escort

¹¹ This information is taken from a June 2001 assessment of the New Zealand vice scene prepared by the New Zealand Police (see report PRB/JP/1).

parlours and agencies, rap parlours, and strip clubs. Again, this involvement is often covert and not readily apparent to either the general public or even casual business clients.

Due to their independent nature, private workers are less likely to be under the control or influence of organised crime.

Factors motivating entrance into prostitution

In the past prostitution has been defined in terms of deviancy, with prostitutes characterised as mentally deficient nymphomaniacs. More recent research has challenged this stereotype. The most significant factor in a woman entering prostitution appears to be economic. Other factors include lack of other options due to limited education, relative freedom and flexibility of work hours, and early sexualisation (often through childhood sexual abuse). Research in 1991 in New Zealand showed the reasons for entering prostitution were purely economic and a matter of survival. This research also showed a correlation between sexual and other abuse on young girls and women and their later entry into prostitution.

Number of people involved in the sex industry

Due to the hidden nature of the sex industry there is very little quantitative data available on the numbers of people involved. However, a June 2001 New Zealand Police assessment of the vice scene in New Zealand provides some information on the number of people involved in this industry. The assessment stresses that it does not purport to provide any accurate quantitative measure of the total number of sex workers and businesses in this country. While all four metropolitan centres were canvassed, only a sampling regime was conducted in respect of provincial areas.¹²

A total of just under 4500 individual sex workers were identified over the areas canvassed. Of these, workers employed in licensed massage parlours are by far the largest group in terms of actual employment. The forms of prostitution identified in the assessment are as follows:

- Licensed massage parlours. These businesses employ persons who legitimately offer a service as a masseuse or masseur or

¹² The centres canvassed were Auckland City, Christchurch, Dunedin, Hamilton, Henderson, Invercargill, Masterton, New Plymouth, Napier, Nelson, Otahuhu, Palmerston North, Queenstown, Rotorua, Takapuna, Tauranga, Timaru, Wanganui, Wellington, Whangarei.

illegally offer themselves as prostitutes providing in-house services on the premises in question.

- Rap parlours/Escort parlours. These are unlicensed premises, which are basically brothels offering in-house services on the premises in question.
- Escort agencies. These businesses do not operate from any usual fixed business. Services are otherwise provided on an 'out-call' basis in short-term motel accommodation or at the customer's own address.
- Private workers. These operate on a self-employed basis through telephone contact with potential customers and regularly advertise in various newspapers and magazines.
- Strip clubs. While in some quarters strip clubs may not be perceived as an integral part of the prostitution based sex industry, definite linkages do exist. In many instances but more so in provincial centres strip club owners also run businesses such as massage and escort parlours. Both operations are commonly run in tandem from adjoining or nearby premises. In such instances female employees are often concurrently involved in both activities.
- Peep shows. These operate from a fixed place of business and involve voyeuristic activity whereby workers perform activities of an erotic or sexual nature for customers to view. No actual physical contact occurs between the worker and the client.
- Street workers. These workers offer themselves as prostitutes by advertising themselves physically on street corners and other places known for such activity.
- Ship girls. Ship girls have historically been a feature of prostitution in this country, providing services to visiting seamen at most port cities around the country.
- Bar girls. This group was only identified in a North Island provincial centre and was described as small in number and operating from bars and night-clubs. However, the findings of a 1999 survey of sex workers in Christchurch also identified a small number of workers operating from similar venues and separate from other recognised forms of prostitution. It is possible this form of prostitution exists in other areas but due to its 'underground' nature is conducted without full Police knowledge.

The number of identified sex workers by form of employment over areas canvasses is set out below (bar girls are not included):

<i>Form of prostitution</i>	<i>Number</i>	<i>Percent</i>
Massage parlours	1929	43%
Escort agencies	1383	31%
Private workers	700	16%
Strip clubs	179	4%
Street workers	112	2.5%
Ship girls	98	2%
Rap parlours	50	1%
Peep shows	27	0.5%

A total of 306 individual sex businesses were identified over all the areas surveyed.¹³ The type of businesses can be identified as follows:

<i>Form of prostitution</i>	<i>Number</i>	<i>Percentage</i>
Escort agencies	162	53%
Massage parlours	112	37%
Strip clubs	16	5%
Peep shows	10	3%
Rap parlours	6	2%
Total	306	100%

The New Zealand Prostitutes Collective (NZPC) confirms the lack of qualitative information regarding the number of sex workers in New Zealand. It has estimated the number of workers at 8500 in any one year, although qualifies that this is based on a reported Police figure from 1989. The NZPC states the majority of workers work in massage parlours.

Various submissions commented on the number of indigenous people involved in the sex industry in New Zealand. These submitters suggest there is a disproportionate involvement of Maori and Pacific women working in the sex industry. The following statistics show the ethnicity of people convicted for soliciting between 1997 and 2000. These figures show an over representation of Maori and Pacific peoples.

¹³ **Note:** It is important that care is taken interpreting the figures in both tables too literally as it is not a nation-wide survey. In addition to this, many businesses do not operate in a regulated environment, the industry is somewhat fluid in nature with frequent crossover in terms of individual workers operating concurrently for various operators or themselves.

<i>Ethnicity</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>
European	7 (17.5 %)	7 (15 %)	4 (13%)	1 (10%)
Maori	21 (52.5%)	27 (59%)	1 (40%)	7 (70%)
Pacific peoples	11 (27.5%)	11 (24%)	10 (34%)	1 (10%)
Other	1 (2.5%)	1 (2%)	4 (13%)	1 (10%)
Total	40	46	30	10

<i>Gender</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>
Male	2 (65%)	22 (48%)	17 (57%)	4 (40%)
Female	14 (35%)	2 (52%)	1 (43%)	6 (60%)
Total	40	46	30	10

Source: Ministry of Justice.¹⁴

History of bill

The bill has its origins in the 1980s when the then Labour Government made funding available to the NZPC as part of a national AIDS/HIV strategy. This funding, which was continued by subsequent National and coalition administrations, provided the NZPC with the opportunity to focus on broader issues such as the legal environment of prostitution and whether public health standards within the sex industry needed to be raised.

The sustained funding allowed the NZPC to formulate decriminalisation as a model for prostitution law and, by the 1990s, the cause for decriminalisation developed as a joint political and community project. In 1997 a Women's Forum was held in Wellington out of which a group was formed to work on the bill. This group included representatives from the NZPC, YWCA, National Council of Women, the AIDS Foundation, and individuals. In Parliament, the debate over decriminalisation was taken up by Hon Maurice Williamson, as Associate Minister of Health, then Katherine O'Regan, MP and later, in 1996, by Tim Barnett when he entered Parliament. The bill was introduced in 1999 and referred to the Justice and Electoral Select Committee on 8 November 2000. The committee's consideration of the bill was interrupted by the early general election in July 2002. In the Parliament that followed the new Justice and Electoral Committee picked up and completed the substantial work undertaken by the previous committee.

¹⁴ Another source of information in relation to ethnicity of sex workers is the Plumridge and Abel study which was a cross-sectional survey of 303 female sex workers in Christchurch undertaken in May-September 1999.

Visit to examine the operation of the laws regarding the sex industry in the States of New South Wales and Victoria, September 2001 (report by Tim Barnett)

The provenance of the visit

The visit was intended to give a first-hand impression of:

- the operation of prostitution legalisation and decriminalisation regimes on the ground; *and*
- the reality of the operation of the sex industry in the two most populous Australian cities.

The participants were all involved as permanent or occasional members of the New Zealand Parliament's Justice and Electoral Committee, which at the time of the visit had spent a year hearing and considering public submissions on the Prostitution Reform Bill. The pressures of Parliament and the fact that participants were self-funded limited the length of the visit.

The participants (with positions at the time denoted)

Tim Barnett (Labour), MP for Christchurch Central and Chair of the Justice and Electoral Select Committee

Phillida Bunkle (Alliance), list MP and member of the Health Select Committee (Sydney only)

Nanaia Mahuta (Labour), Maori MP for Te Tai Hauru Electorate and member of the Justice and Electoral Select Committee

Dr Wayne Mapp (National), MP for North Shore and Chair of the Justice and Electoral Select Committee for the purposes of consideration of the Prostitution Reform Bill

Hon Mrs Georgina Te Heu Heu (National), list MP and member of the Justice and Electoral Select Committee for the purposes of consideration of the Prostitution Reform Bill.

The programme

17 August 2001

8.40am	Arrive Melbourne
10.30am–11.30am	Department of Justice and Electoral Committee
2.00pm–4.00pm	RhED (Health/community/drop in centre, St Kilda)

4.00pm–5.00pm Street prostitution Advisory Group (Richard Wynne, Chair MLA)

18 August 2001

3.20pm Arrive Sydney
4.00pm–5.00pm South Sydney City Council

20 August 2001

8.30am–9.00am Meeting with Terry Fairclough, Delegate
escort from Consul General's Office
9.00am–10.00am Jennifer Hickey, Attorney General's Office
10.00am–11.00am Pat Rogan, ex-chair of select committee
11.00am–12.00 Basil Donovan, Director, Sydney Sexual
Health
3.00pm–4.00pm SWOP (Sex Workers Outreach Project)
4.00pm–5.00pm Peter Collins, MLA

What we found

The purpose of organising a cross-party group to visit Australia was to enable people with differing viewpoints to share common experiences. I cannot speak on behalf of the others who went. My key impressions were as follows:

- the wide range of people with whom we made contact were very willing to discuss openly with us the operation of what is a multi-faceted industry. They were hindered by **the absence of hard data** on trends in the sex industry since law reform in either state. I was persuaded by the detailed impressions of some people in a position to know, but tangible information would have made our task much easier.
- the operation of the sex industry in two large cities, both with populations broadly equating to New Zealand's, has only **limited comparative value** with the industry here. Apart from volume, key differences included the very different planning and local body environments in both states and the history of police corruption, notably in New South Wales.
- there was no tangible evidence that **the number of sex workers** had increased as a result of decriminalisation (New South Wales). We were told by Dr Basil Donovan, head of the Sydney Sexual Health Service, that the major factor affecting the numbers of workers was demand, and that demand was influenced by such factors as the numbers of tourists, the level

of fear of sexually transmitted infections and general levels of affluence. We were also told that the proportion of men who were clients of the industry in a 12 month period was 10 percent in New South Wales, double the figure of other states. No credible reason for this discrepancy was provided! We were also informed that no new brothels had been established in the South Sydney district since the advent of law reform.

- the state of Victoria faces significant difficulties in working through its legalised approach. **Legalisation** inevitably generates illegal operations and activities, and enforcement becomes chronically difficult. Non compliance levels of the degree quoted to us bring the entire law into disrepute. Legalisation restricts the number of brothels, which is why (as we were informed) the number of (legal) street workers in decriminalised Sydney was considerably lower than the number of illegal street workers in legalised Melbourne.
 - the **zoning of street work** in New South Wales is the most obvious failing within their law. In an intensively developed inner city area, it is in my view simply unworkable to set and enforce distance limits from churches, schools etc for street soliciting. Also, the institutions which the law intends to be “street worker-free” are almost without exception places not used during the time that street work happens.
 - although we went to Australia armed with **anecdotes of a huge increase due to law reform in the number of brothels and in the involvement of under-age workers**, we received no tangible evidence of such trends. Indeed, those we met were very surprised to hear the stories.
 - since the Victorian system generates illegal as well as legal operations, there remain significant **contact between the industry and the Police** on matters of prostitution. The New South Wales system has overcome this, with local bodies holding what **discretion** remains. That has meant significant debates over the siting of some brothels, especially in suburban areas. The major point of contact between the state and the industry has, there, moved from the Police to public health. That is, in my view, as it should be.
-

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

~~Subject to this Act,~~

Words struck out by a majority

Subject to this Act,

Words inserted by a majority

Tim Barnett

Prostitution Reform Bill

Member's Bill

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Schedule
Consequential amendments
to enactments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Prostitution Reform Act **2000**.

New (majority)

Part 1
Preliminary provisions

2 Commencement

This Act comes into force *<on the day>* *<3 months>* after the date on which it receives the Royal assent.

Struck out (majority)

3 Purpose

The purpose of this Act is to decriminalise prostitution, and to create a framework which safeguards the human rights of sex workers and protects them from exploitation, ensures the legislative framework of welfare and occupational health and safety protections is able to apply to sex workers, creates an environment which is conducive to public health, and protects children from exploitation in relation to prostitution.

New (majority)

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—

New (majority)

- (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.

Struck out (majority)**4 Interpretation**

In this Act, unless the context otherwise requires,—

brothel means any house, room, set of rooms, or place of any kind 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 any prostitution that occurs at those premises occurs under an arrangement initiated elsewhere

business of prostitution means—

- (a) any firm, organisation, body of persons in the nature of a partnership within the meaning of the Partnership Act 1908 (whether incorporated or not), which; or
- (b) any person who,—
carries on a business of providing commercial sexual services

child means a person who is under 18 years

coerce means knowingly to act to prevent another person from exercising freedom of choice or action, or to induce or compel another person to undertake any action against his or her will, including actual, or implied or explicit threats of,—

- (a) physical harm:
- (b) sexual or psychological abuse:
- (c) intimidation; including—
 - (i) the improper use of any power or authority arising out of any occupational or vocational position held by any person; or
 - (ii) the making of an accusation or disclosure (whether true or false) about the misconduct of

Struck out (majority)

any person that is likely to damage seriously the reputation of the person against or about whom the accusation or disclosure is made:

- (d) harassment:
- (e) damage to that person's property:
- (f) supplying a controlled drug within the meaning of the Misuse of Drugs Act 1975:
- (g) withholding supply of a controlled drug within the meaning of the Misuse of Drugs Act 1975:
- (h) withholding money or property owed to that person:
- (i) imposing any pecuniary or other penalty, or taking disciplinary action, otherwise than in accordance with a person's agreed conditions of employment or service

commercial sexual services means sexual services provided for monetary or material reward (irrespective of whether the reward is, or is to be, paid or given (directly or otherwise) to the person who provided the sexual services)

prostitution means the provision of commercial sexual services

safer sex practices includes actions to minimise the risk of acquiring or transmitting sexually transmissible diseases

sex worker means a person who personally provides commercial sexual services, including, but not exclusively, services provided as part of the business of a brothel or business of prostitution

New (majority)**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

New (majority)

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 90**

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

territorial authority has the same meaning as in section 2(1) of the Local Government Act 1974; but does not include the Minister of Local Government.

- (2) For the purposes of this Act, a person **operates**—
 - (a) a business of prostitution if the person—
 - (i) carries on that business:
 - (ii) manages or takes part in the management of that business:
 - (iii) has day-to-day control of the conduct of that business:

New (majority)

- (b) a brothel if the person operates a business of prostitution at the brothel.
- (3) 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).

4A Act binds the Crown

This Act binds the Crown.

Part 2

Commercial sexual services

Contracts for commercial sexual services not void

5 Contract for provision of commercial sexual services not void

〈Subject to the provisions of this Act, no〉 〈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.

Struck out (majority)**6 Operators of brothels and businesses of prostitution to promote safer sex practices**

- (1) Every person who operates a brothel or who has effective control of a business of prostitution, must—
- (a) take all practical steps to ensure the use of prophylactic sheaths by clients of that brothel or business of prostitution; and
 - (b) give information on safer sex practices to sex workers operating in or from, and clients of, that brothel or business of prostitution; and
 - (c) display information on safer sex practices prominently in any premises used as part of the business of the brothel or business of prostitution; and

Struck out (majority)

- (d) not use the fact of a sex worker's attendance at a medical examination, or the result of such an examination, for the purpose of inducing a person to believe the sex worker is not infected with a sexually transmissible disease.
- (2) Every person commits an offence and is liable to a fine not exceeding \$10,000 who contravenes **subsection (1)**.
- (3) For the purposes of this section,—
 - (a) a person operates a brothel if he or she controls or manages, or takes part in the control or management of, the brothel:
 - (b) a person has effective control of a business of prostitution if he or she personally supervises, manages and controls the conduct of the business of prostitution.

New (majority)*Health and safety requirements*

- 6 Operators of businesses of prostitution must adopt and promote safer sex practices**
- (1) Every person who operates a business of prostitution (other than a business for which that person is the only sex worker) 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

New (majority)

- (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.

6A 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.

6B 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.

New (majority)

- (2) However, nothing in this Act (including **subsection (1)**) limits that Act or any regulations or approved codes of practice under that Act.

*Limits on signage advertising commercial sexual services***6C Bylaws prohibiting and regulating offensive signage advertising commercial sexual services**

- (1) A territorial authority may make bylaws for the purpose of prohibiting or regulating signage that—
- (a) is visible to a person in a public place (other than only in a brothel or other premises in which a business of prostitution is carried on); and
 - (b) advertises commercial sexual services in a way that the territorial authority is satisfied would unreasonably cause offence to the community generally.
- (2) The territorial authority must, before making the bylaw, have regard to the interests of businesses of prostitution in its district.
- (3) The bylaw may—
- (a) apply throughout a district or part of a district; and
 - (b) make different provision for different parts of a district.

6D General provisions about bylaws

- (1) Any bylaws made under **section 6C** must be made in accordance with the Local Government Act 1974 (except as otherwise provided by this Act) and must be treated as having been made under that Act.
- (2) **Section 6C** does not limit any other powers that a territorial authority has under any other enactment.

Struck out (majority)**7 Coercion**

- (1) No person may coerce or attempt to coerce any person into providing commercial sexual services.
- (2) No person may coerce any person into surrendering the proceeds of commercial sexual services provided by that person.

Struck out (majority)

- (3) Every person commits an offence and is liable to imprisonment for a term not exceeding 7 years who contravenes **subsection (1)** or **subsection (2)**.

8 Right to refuse to provide commercial sexual service

Every sex worker may at any time refuse to provide any commercial sexual service or, where the provision of that service has commenced, to continue to provide that service, and any agreement purporting to remove the right to refuse to provide or refuse to continue to provide such a service is void.

New (majority)*Protections for sex workers***7 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

New (majority)

- (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.

8 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***8A 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.

Struck out (majority)

- 9 No person to contract for or be party to provision of commercial sexual services by a child**
- (1) No person may cause a child to provide, or assist a child in the provision of, commercial sexual services.
 - (2) No person may enter into a contract or arrangement as a result of which any person receives or is to receive commercial sexual services provided by a child.
 - (3) No person may receive a payment or other reward that he or she knows, or could reasonably be expected to have known, is derived, directly or indirectly, from commercial sexual services provided by a child.
 - (4) Every person commits an offence and is liable to imprisonment for a term not exceeding 7 years who contravenes **subsection (1)** or **subsection (2)** or **subsection (3)**.
 - (5) No person commits an offence against this section who provides counselling or health advice to a child, but who does not otherwise encourage or facilitate the provision of commercial sexual services by that child.
 - (6) No child may be charged as a party to an offence committed upon or with that child against this section.
 - (7) It is no defence to a charge against this section that the child consented or that the person charged believed, reasonably or otherwise, that the child was 18 years or over.

New (majority)*Prohibitions on use in prostitution of persons under 18 years*

- 9 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.
- 9A 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

New (majority)

or indirectly, from commercial sexual services provided by a person under 18 years of age.

9B 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.

9C Offence to breach prohibitions on use in prostitution of persons under 18 years

- (1) Every person who contravenes **section 9, section 9A, or section 9B** commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 7 years.
- (2) No person contravenes **section 9** 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

9D Purpose of inspection

- (1) The powers of inspection in **section 9F** may be used only for the purpose of determining whether or not a person is complying, or has complied, with **section 6 or section 6A**.
- (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.

New (majority)**9E 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 9F** and the purpose under **section 9D** for which those powers may be used.

9F 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

New (majority)

grounds to believe will be evidence of the commission of an offence against **section 6 or section 6A**.

- (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.

9G Entry of homes

- (1) An inspector may not enter a home under **section 9F** 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 **sub-section (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.

9H Requirements when carrying out inspection

- (1) An inspector must, on entering premises under **section 9F** 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 9F** and the purpose under **section 9D** for which those powers may be used; and

New (majority)

- (d) if entering a home under a warrant issued under **section 9G(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).

9I 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 to enter to enforce prohibitions on use in prostitution of persons under 18 years

9J Warrant for police to enter places to enforce prohibitions on use in prostitution of persons under 18 years

New (majority)

- (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 against **section 9C** has been, is being, or is likely to be committed in the place; 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.

9K Form and content of warrant

- (1) A warrant under **section 9J** must be in the prescribed form and state—
 - (a) the place that may be entered; and
 - (b) that the warrant has been issued in respect of an offence against **section 9C**; 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 9J(3)**.
- (2) The warrant must be directed generally to every member of the police.

9L Powers conferred by warrant

- (1) Subject to any conditions stated in the warrant, a warrant under **section 9J** 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

New (majority)

- (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 ground to believe will be evidence of the commission of an offence against **section 9C**.
- (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.

9M Requirements when executing warrant

- (1) A member of the police who executes a warrant under **section 9J** 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.

New (majority)

- (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

Miscellaneous provisions

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

9N 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 to limit or control the location and conduct of prostitution or to license sex workers or persons who operate 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

New (majority)

- (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.

90 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

New (majority)

Gazette, that is after the date of its report to the Minister under **section 9N(b)(vii)**.

9P 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.

9Q 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.

9R 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.

New (majority)*Regulations***9S 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 9G and 9J**;
- (b) 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;
- (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Struck out (majority)*Repeals***10 Repeals**

The following enactments are repealed:

- (a) sections 147 to 149 of the Crimes Act 1961;
- (b) Massage Parlours Act 1978;
- (c) section 26 of the Summary Offences Act 1991;
- (d) Massage Parlours Regulations 1979 (SR 1979/35);
- (e) Massage Parlours Regulations 1979, Amendment No 1 (SR 1987/52);
- (f) Massage Parlours Regulations 1979, Amendment No 2 (SR 1991/193).

11 Consequential repeals

- (1) The enactments specified in the **Schedule** are consequentially repealed.

New (majority)*Repeals, amendments, and transitional provisions***10 Repeals and revocations**

- (1) The following enactments are repealed:
 - (a) sections 147 to 149A of the Crimes Act 1961 (1961 No 43):
 - (b) Massage Parlours Act 1978 (1978 No 13):
 - (c) section 26 of the Summary Offences Act 1981 (1981 No 113).
- (2) The Massage Parlours Regulations 1979 (SR 1979/35) are revoked.

11 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.

12 Transitional provisions for past offences

- (1) No person may be convicted of an offence against any of the enactments repealed by **section 10** (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.

Struck out (majority)

s 11

**Schedule
Enactments repealed**

Building Act 1991 (1991 No 150)

So much of the Fourth Schedule as relates to the Massage Parlours Act 1978.

Fees Regulations 1989 (SR 1987/68)

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

Homosexual Law Reform Act 1986 (1986 No 14)

Section 6(2).

Summary Offences Act 1981 (1981 No 113)

So much of the First Schedule as relates to the Massage Parlours Act 1978.

New (majority)

Schedule

Consequential amendments to enactments

s 11

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 2000

Section of Act	Offence
7	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 2000	section 9C	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