

# HARM REDUCTION IN SUBSTANCE USE AND HIGH-RISK BEHAVIOUR

International Policy and Practice

EDITED BY

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 WILEY-BLACKWELL

Addiction **Press**

This edition first published 2012  
© 2012 by Blackwell Publishing Ltd

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*Registered office:* John Wiley & Sons, Ltd, The Atrium, Southern Gate, Chichester, West Sussex, PO19 8SQ, UK

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The Atrium, Southern Gate, Chichester, West Sussex, PO19 8SQ, UK  
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*Library of Congress Cataloging-in-Publication Data*

Harm reduction in substance use and high-risk behaviour : international policy and practice / edited by

Richard Pates, Diane Riley.

p. ; cm.

Includes bibliographical references and index.

ISBN 978-1-4051-8297-3 (pbk. :alk. paper)

I. Pates, Richard. II. Riley, Diane M. (Diane Mary), 1953-

[DNLM: 1. Harm Reduction. 2. Substance-Related Disorders--therapy. 3. Risk Reduction Behavior. 4. Risk-Taking. WM 270]

362.19686—dc23

2012007474

A catalogue record for this book is available from the British Library.

Cover image: Gracey Stinson/Morguefile.com

Cover design by Steve Thompson

Wiley also publishes its books in a variety of electronic formats. Some content that appears in print may not be available in electronic books.

Set in 10/12.5 pt Sabon by Thomson Digital, Noida, India  
Printed and bound in Malaysia by Vivar Printing Sdn Bhd

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## Chapter 19

# HARM REDUCTION AND SEX WORKERS: A NEW ZEALAND RESPONSE: TAKING THE HARM OUT OF THE LAW

*Catherine Healy, Calum Bennachie and Raewyn Marshall*

### Introduction

Harm Reduction, as a concept, developed in New Zealand within the context of HIV prevention in the mid-1980s and throughout the 1990s (Patterson, 1996: 41). The emergence of the needle exchange programme (NEP) and related political debates enabled the use of expressions such as 'reducing and minimising the risk of disease' (Luke, 2007: 366) which were forerunners to the harm reduction discourse. The rhetoric of 'reducing risk' was useful to secure funding from the government for peer managed needle exchange programmes. By the late 1980s independent needle exchange organisations were operating in the main cities throughout New Zealand. In addition, a number of pharmacies nationwide had opted in to the NEP and were also providing needle exchange services.

Sex workers were one of the targeted populations that the government and AIDS activists identified as requiring specialised programmes in respect to HIV prevention. It took the formation of the New Zealand Prostitutes Collective (NZPC) for effective programmes to be put in place. Although founded slightly before needle exchanges, NZPC was not funded until afterwards (Davis and Lichtenstein, 1996: 6). Until that time, the voices of sex workers had been muted – only heard through court hearings related to prostitution cases. These cases included soliciting, brothel keeping, living on the earnings and procuring for the purposes of prostitution.

### Background

In 1987, sex workers were motivated to form their own organisation – the New Zealand Prostitutes Collective (NZPC) – by concerns related to the potential threat of HIV on their lives and issues pertaining to the illegality of sex work and how these compromised sex workers' occupational safety and health. There were a number of negative public perceptions, often portrayed in hostile media reports, depicting sex workers as being 'a reservoir of disease, out of control of their lives and irresponsible' (Healy et al., 2010: 46), often drug addled and posing a risk in terms of the transmission of HIV to the general public. There were few articles expressing genuine concern for the sex workers themselves.

Sex workers didn't have an organised voice until

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*Harm Reduction in Substance Use and High-Risk Behaviour: International Policy and Practice*, First Edition.

Edited by Richard Pates and Diane Riley.

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a group of nine Wellington women working in massage parlours met to discuss forming an organisation to represent sex workers in New Zealand. Soon after, they connected with other sex workers, including those working on the streets and as escorts. Women, transgendered people and male sex workers were all part of the mix.

(Healy et al., 2010: 46)

In 1988 a representative of NZPC was appointed to the National Council of AIDS by the Minister of Health. This was the first appointment of a recognised sex worker to an official body which was charged with advising government. It signalled that a new approach was emerging from government to engage with sex workers. Later that same year, the Minister of Health negotiated a contract modelled on the principles of the Ottawa Charter which enabled NZPC to provide community based HIV prevention services to sex workers throughout the country (Chetwynd, 1996: 136–47). Based on the Ottawa Charter, NZPC devised its own programmes specific to the diverse needs of sex workers. These programmes included the operation of community drop-in centres with peer-operated needle exchanges and outreach services to sex work venues.

As these programmes unfolded, it became apparent that the police and their enforcement of the laws surrounding sex workers created problems for NZPC and its HIV prevention agenda and this triggered the initial call for the decriminalisation of prostitution from NZPC, with the backing of several prominent politicians (NZPC, 1989: 12–13). While it was not illegal to be a sex worker, the activities associated with sex work such as soliciting, procuring, brothel keeping and living on the earnings were against the law. The majority of sex workers under the guise of ‘masseuse’ or escort, worked from massage parlours and escort agencies, as well as a small number of street-based sex workers. Many sex workers were subject to police scrutiny and sometimes arrested and convicted in court for soliciting (Healy et al., 2010: 45–6).

Most sex workers worked underground in massage parlours, where the police had the legal right to enter at any time and check a register of names. Sex workers with drug convictions, including those related to the possession of a small amount of marijuana as well as other drugs, were forbidden from working in this indoor branch of the sex industry. This approach gave the police arbitrary powers over the lives of many sex workers and in particular those who used drugs. There was a concern that the heavy scrutiny by the police and their recording of the names of sex workers compromised their health and safety:

In many ways, the registration hinders women if they have had a prior drug conviction, regardless of how long ago this may have occurred and their current health status, making it illegal for them to work in any massage parlour. This then forces women into working at other less safe venues and locations, with less access to harm reduction and safer sex information, support and products.

(Drugs Health Development Project, 2001: 2)

During the period prior to law reform it appeared to NZPC that sometimes the police colluded with the licensed massage parlour proprietors to maintain a large degree of control over these sex workers, including frequently searching their bags for drugs. Sex workers who were known to use drugs would have to tolerate appalling workplace conditions and exploitative practices, knowing they were vulnerable to being expelled from this major branch of the sex industry without any means of redress. Sex workers would feel vulnerable carrying condoms in light of these determined police searches and the illegality of sex work in massage parlours.

It was usual for condoms, which were subsidised by Ministry of Health for the distribution by NZPC to sex workers, to be seized by the police and presented as evidence to achieve prostitution-

related convictions (Abel et al., 2010: 76). Furthermore, the Public Health Association (PHA) noted: 'Health promotion resources funded by Regional Health Authorities and produced by the NZPC were also presented to the Court to contribute to the pattern of evidence' (PHA, 2001: 5).

There were other areas of tension which related to sex workers being registered on a police database (Abel, 2010: 91; PUMP, 2001: 11). The Prostitution Law Review Committee (PLRC) reported that sex workers who wished to move to other occupations ran the risk of being prevented from doing so if their connection to sex work was discovered through standard security and reference checks (PLRC, 2008: 70).

Sex workers were placed at risk as they were inhibited from reporting violence to the police. Abel (2010: 27) reports that Pyett and Warr (1997; 1999) were concerned that sex workers were unwilling to contact the police when they were victims of violence 'Due to perceptions of disconnection from the justice system because of their illegal status.' There were similar feelings in New Zealand sex workers (Jordan, 2010: 40), with two-thirds of sex workers surveyed in Christchurch prior to law reform stated they did not believe the majority of police cared enough about their safety (Plumridge and Abel, 2000). There was a fear that they would be prosecuted for their involvement in sex work. Furthermore, they were reluctant to disclose their involvement in sex work to health professionals (Plumridge and Abel, 2000) and as a result missed opportunities for more appropriate healthcare.

Public health experts also noted that while decriminalisation would not on its own remove the stigma associated with sex work, it would reduce some of the significant abuses associated with it (PHA, 2001: 5). Sex workers themselves are always very clear as to the causes of the harms involved in sex work. They identify the illegal nature of sex work as causing harm, along with the perception that they are criminals. There is stigma associated with this perception which causes harm.

The fall-out from convictions related to prostitution had far-reaching consequences. Sex workers who were working in licensed massage parlours instantly lost their jobs and were prohibited from working in this indoor branch of the sex industry for ten years. This often meant that sex work options were severely reduced. For sex workers who were used to working in these managed environments, it meant relocating to unfamiliar branches of the sex industry, such as street-based sex work or working as escorts providing outcalls to clients in places of the client's choice.

NZPC recalls that street based sex workers were obvious targets for police and were sometimes harassed by the street patrols that would search their bags for drugs and condoms. Sometimes they were arrested while going about their daily business unrelated to sex work on suspicion of soliciting for sex in a public place. They were removed in police vans to be detained, photographed and finger printed at police stations. This resulted in court appearances and these sex workers were usually convicted and fined. Curfews would also be imposed as additional punishment, which would severely erode a sex workers' ability to earn a living.

This pattern of enforcement created a revolving door scenario, where the sex workers would then have to return to a new site on the street to try to avoid future detection by the police.

This dislocation from working in familiar territory undermined the safety of these sex workers. Mutually supportive peer groups comprised of street-based sex workers watching out for each other's safety would be fragmented; outreach teams from the NZPC and other service providers would have to re-establish contact; known safe places which could be relied on in a time of crisis would be out of reach; income would be affected with the disruption, creating financial stress.

In addition there could be further repercussions. Names of sex workers who had been convicted would be published in daily newspapers. The information could be used by the authorities against them, including questioning such things as their suitability as parents. Landlords of sex workers could be pressured by the police to evict them from their accommodation or face the consequences

of being prosecuted for illegally living on the earnings of prostitution. All these circumstances caused real harm to sex workers.

NZPC advocated for a more supportive social environment where sex workers would have a full spectrum of rights and protections. The criminalisation of sex workers was identified as being a major impediment to their safety, health and well-being and the cause of significant harm (Jordan, 2010: 40; Abel, 2010: 41–6).

### Reorienting the law: a harm reduction strategy

NZPC campaigned vigorously to change the law. It built a profile in the media and spoke out against the harm caused to sex workers by the enforcement of the anti-prostitution laws. It proposed that the laws be decriminalised and gathered community support for this end. A range of non-government and government funded bodies – including those with an interest in public health, human rights, people who use drugs and women's organisations – and recognised that sex workers' safety health and well-being would be better served by significant changes to the law. An organisation which provided needle exchange programmes for a wide range of people and professions, including sex industry workers (DHDP, 2001: 5) identified concerns related to the dissemination of harm reduction information, education and products in a criminalised environment.

Eventually a bill was put before Parliament proposing the decriminalisation of prostitution. Tim Barnett, the Labour MP who sponsored the bill, debated the decriminalisation of prostitution as a harm reduction model for sex workers (Barnett et al., 2010: 62, 65).

The overall intention of the Bill was to shift the focus away from the criminal law – which was there to prosecute sex workers, inflated the risks of prostitution and rewarded the strong while punishing the weak – to one where there was an expectation that sex workers would be protected from harm (Barnett, 2003). Public Health authorities endorsed the decriminalisation of prostitution and submitted that

Our submission is not concerned with questions relating to the desirability or morality of sex work. Our concern is whether legislation changes would reduce the harm that results from social and legal marginalisation and enhance the health status of all those involved with the sex industry; sex workers, their clients and their partners, friends, families and communities.

(PHA, 2001: 4)

The Prostitution Reform Act (PRA) passed in 2003 and is considered as a harm reduction model for sex workers.

NZPC believes that it is not the nature of sex work that causes harm, but rather it is the laws and policies applied to sex workers in a criminalised environment that cause real harm. The PRA provides a legal environment in which sex workers are able to exercise their rights and therefore reduce harm.

The aims of the PRA are to decriminalise prostitution and create a framework that safeguards the human rights of sex workers and protects them from exploitation while promoting their welfare, occupational health and safety and to be conducive to public health. It also prohibits the use of persons under the age of 18 in prostitution.

There are many features related to the PRA which sex workers say contribute to their overall safety and well-being. This legal approach allows them to operate from a wide range of venues, including large and small managed brothels. Since decriminalisation, there has been an increase in sex workers who are choosing to cut out the third-party management tier (Abel et al., 2007:

97–100). NZPC understands this is because they believe their occupational safety and health is best served by determining and managing their own sex work conditions. These sex workers work for themselves, or with other sex workers as equals, from small owner operated brothels (SOOBS). Street based sex work is also permitted, although controversy still continues in some cities and neighbourhoods regarding the location of sex workers and brothels.

These workplace options ensure most sex workers can work within the law with expectations of having rights and protections, wherever they work. There are no laws prohibiting sex workers with drug or other convictions from working in any branch of the sex industry. However, people with convictions for some drug offences, violent crime or money laundering are prohibited from operating brothels but can appeal against this decision on the basis that these are historical crimes.

Government agencies, some of which had had no previous involvement with the sex industry had to adjust to this decriminalised environment and engage with sex workers and brothel operators in a new way.

The Department of Labour (DoL) developed Occupational Safety and Health (OSH) guidelines specifically for the sex industry. To do so, they consulted with sex workers and sex worker organisations including NZPC and Scarlet Alliance, Australia (OSH, 2004: 7). These guidelines carry information related to 'any issue, task or condition in a workplace that may impact on the health and well-being of the people who are working there' (OSH, 2004: 17). The guidelines reinforce the PRA, acknowledging the rights of sex workers to go unharmed.

The Guidelines explain: 'Operators, sex workers and clients have roles and responsibilities under the laws dealing with prostitution, occupational safety and health and public health' (OSH, 2004: 21). In this decriminalised environment, sex workers are also covered by Employment Relations and Accident Compensation law. There is information informing sex workers about regulatory agencies and unions which can assist them in complaints. Advice is provided relating to sexual health and education for sex workers, their clients and management. Sex workers are advised to undertake sexual health assessment based on their specific needs and do not have to work under a regime of imposed mandatory testing. There is practical information related to avoiding condom breakage or slippage and pregnancy as well as information related to disinfecting equipment used for sex work.

The Guidelines advise:

When as part of their regular work, employees are to operate equipment such as that used in B&D [bondage and discipline] fantasies, it is imperative for the safety of both employees and clients that the employer provides comprehensive training on safe use of the equipment for the employee.

(OSH, 2004: 36)

Other information refers to the cleanliness of workplace amenities, body fluid spills, heating and lighting. There are concerns raised about psychosocial factors, including the vulnerability of sex workers who use drugs and the potential for clients to exploit them. Security and safety from violence is explained, with suggestions for the training of brothel operators and sex workers on how to identify potentially dangerous situations, how to protect sex workers and to develop strategies to eliminate risks (OSH, 2004: 51–60). The DoL also facilitates in labour disputes which occur between sex workers and brothel operators. Sex workers are able to utilise mediation services to resolve their differences including contracts or unfair employment practices.

The legal recognition of sex work as work has opened up the possibility of using other legislation to protect sex workers from harm, such as the Health and Safety and Employment Act 1992. Inspectors can visit brothels to check on the physical conditions such as heating or the way in which hazards are managed in the workplace, including the prevention of violence and security issues.

There is also potential to address bullying and workplace stress. For sex workers who encounter sexual harassment by brothel operators in the workplace, their complaints can be upheld by the Human Rights Act 1993. Sex workers have taken advantage of this, but unfortunately, the Human Rights Act does not extend to protection on the basis of employment as a sex worker and discrimination continues to occur.

Disputes related to money can be resolved through the Disputes Tribunal, accessible through the local district court. Clients and brothel operators have appeared before this tribunal and have had to recompense sex workers for unpaid monies owing.

The Ministry of Health (MoH) designed, in consultation with NZPC, health promotion signs to be displayed in brothels encapsulating the section in the PRA which states that clients must take all reasonable steps to use a condom and other safer sex barriers for penetrative sex or face a fine. The effect of this law has been to support sex workers in dealing with clients who are resistant to using condoms and other safer sex practices that prevent transmission of HIV and STIs. While sex workers and operators are also covered by these laws they have only been enforced against clients. Sex workers are positive in respect to this part of the PRA but NZPC has concerns that it could be used to the detriment of sex workers and result in more harm. Sex workers may feel they are not able to report a mishap if they do have unsafe sex and they may be vulnerable to entrapment through inappropriate checks by authorities, or even subjected to malicious complaints from others. Medical Officers of Health are able to inspect brothels to ensure signs are displayed and do so on a complaints driven basis. A typical scenario is driven by a sex worker's concern about pressure from brothel managers to relax their standards in relation to some safer sex practices.

The police have experienced a significant change in their relationship with sex workers. Previously as enforcers of the anti-prostitution laws, the police had enormous powers over sex workers. Often these powers, when unleashed would result in harm to sex workers. Sex workers now have an expectation that the police are there to uphold their right to protection from those who would cause them harm.

In this decriminalised setting, police have been able to build positive relationships which are focused on solving crimes committed against sex workers. The PLRC found that

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

(PLRC, 2008: 121)

Furthermore, the PRA can militate against police corruption which some sex workers have complained of prior to the law change. A street based sex worker in this decriminalised environment was able to successfully provide evidence to a court which resulted in a corrupt police officer being convicted of a charge of misusing his authority to get sex from a prostitute (TVNZ, 2009).

Just as violence in society continues to exist, violence against sex workers remains. However, the PRA has changed attitudes of sex workers to the police (Abel, 2010: 235). As a result of this, the PRA

had helped to increase the reporting of violence to the Police, particularly by street workers. There were also indications that incidents of violence against sex workers were being taken more seriously and that in some cases the Police response assisted in resolving situations.

(Mossman and Mayhew, 2007: 10)

Decriminalisation in New Zealand has also meant that sex work safety issues can be discussed openly with people who are starting sex work. Brothel operators can share information with prospective sex workers and face up to their responsibilities as employers. The need for brothels to disguise the nature of their business when hiring sex workers no longer exists in the decriminalised sector. The PRA enables brothel operators to explain to people who apply to work in a brothel, issues of safety in the workplace relevant to sex workers. People are therefore in a position to make informed choices and are not misled through duplicitous procurement into sex work.

Harm reduction for sex workers is best met within a decriminalised environment. As Abel (2010: 325) indicates:

decriminalisation does minimise the harm associated with the sex industry. Sex workers in New Zealand now have greater control over their working environment and are able to utilise the law to more readily negotiate condom use. The realisation of their human rights has enabled sex workers in New Zealand to claim legitimacy in an occupation often conceptualised as unlawful, immoral and unethical. In so doing, the PRA has facilitated the evolution of 'prostitution' into 'sex work' in New Zealand.

### The harm of stigma and discrimination

There are strong arguments for addressing stigma around and discrimination against, sex workers and sex work, as the effects are far reaching. In the Australian Capital Territory (ACT) in Australia there has been legislative reform to prohibit discrimination against sex workers.

Discrimination affects sex workers in a myriad of ways in their professional and personal lives; in judgments made by family and friends, the provision of goods and services, planning laws and decisions, the response of some police to sex worker complaints and in the differential application of sexual assault laws. Many sex workers are reluctant to tell their family and friends how they are employed. Fear of discrimination can also limit sex worker participation in community activities. For some women, there is an additional fear that revealing their occupation may jeopardise custody of their children. Fear of discrimination is a key impediment to sex worker complaint-making to the police and to human rights and other regulatory bodies.

(Scarlet Alliance, 2007)

Sex workers need access to services that are non-discriminatory and acknowledge sex work as work. These services need to be wide ranging and cover all aspects that impact negatively on the lives of sex workers. These should include, but not be limited to, services which relate to justice systems, the provision of housing, general and specific health services, as well as commercial services (such as banks) and access to education.

The provision of non-discriminatory services can assist sex workers to overcome the harmful effects of stigma, even in the most hostile of legal environments. Much of this stigma is societal stigma, though it is often reinforced by prurient media representations and anti sex work campaigners who use language which 'reflects not merely a dislike of sex work, but a hatred of sex workers' (Bennachie and Marie, 2010: 24). It is therefore also important to ensure that anti-discrimination legislation includes sex workers to safeguard them from this harm by seeking to reduce stigmatisation against them.

It is important for countries who are considering changing the law on sex work to avoid legislation that causes harm to sex workers and undermines harm reduction efforts.

Sweden passed a law that criminalised the client of sex workers in 1999. As a result of this law, sex workers reported that they were subjected to a system of police harassment (Kulick, 2005: 209); street based clients are so nervous there is no time for sex workers to negotiate with them to assess their suitability before getting into the client's car; good clients are no longer inclined to contact the police as 'whistleblowers' if they suspect sex workers are in coercive situations as they did before the law was implemented; and sex workers are forced to work alone and cannot work together, making them more vulnerable to dangerous situations (Jacobsson, 2009). In the evaluation completed by the Swedish Government, sex workers stated the law stigmatised them (Skarhed, 2010: 129). The author stated that as the purpose of the Act was to combat prostitution, the stigmatisation reported by sex workers may be seen as a good thing (Skarhed, 2010: 130).

Levels of stigma can affect how people make decisions related to safer sex practices (Bruce et al., 2008; Preston et al., 2007). In combating the harm of HIV, it is important that sex workers are supported in their choices to work safely. HIPS (Helping Individual Prostitutes Survive) utilises a harm reduction model through programmes that 'strive to address the impact that HIV/AIDS, sexually transmitted infections, discrimination, poverty, violence and drug use have on the lives of individuals engaging in sex work' (HIPS, 2010). Programmes such as these and peer based, sex worker led initiatives, such as NZPC, which respect the choices of sex workers are critical to harm reduction efforts.

### Harm reduction for sex workers in hostile legal environments

Internationally, sex workers are exposed to diverse treatment under law. But even in hostile legal environments, harm reduction strategies are being utilised. Sex worker peer advocacy groups and support initiatives now exist in many countries. These organisations are able to identify circumstances which are causing harm to sex workers and to develop responses to combat this harm, including lobbying for legislative change.

In Liverpool, UK, Merseyside police have, since 1996, treated violence against sex workers as a hate crime. Thus, when sex workers in Liverpool report violence against them, it is afforded an enhanced response, with greater police resources being given (Campbell and Stoops, 2010: 9).

There are other harms which can impact heavily on the safety health and well-being of sex workers. Aboriginal sex workers in Canada stress the importance of violence reduction and sex worker-positive strategies, along with outreach programmes that are culturally specific to avoid the harms of discrimination and social isolation (Van der Meulen et al., 2010: 35).

In Hong Kong, organisations concerned with sex workers and peer support spoke out in the media and were able to build public sympathy and awareness around human rights violations which impact on sex workers. Sex workers felt ignored by the police and that their complaints against violence were not being taken seriously. This public support created an opportunity for the organisations to lobby and influence police policy in order that they better protect sex workers (JJJ Association and Zi Teng, 2010: 13–14). Sex worker groups meet regularly with a task force established within the police to help sex workers.

Many sex worker groups urge that it is important to demarcate between the harms of trafficking and sex work. Anti-trafficking campaigns should not harm sex workers. In their view, it is important not to conflate sex work with trafficking.

For example, since 1997, Durbar Mahila Samanwaya Committee (DMSC), a sex worker organisation in Kolkata, India, has taken a strong stance against trafficking of underage girls and women who have been forced, coerced or duped into sex work as it is 'DMSC's experience that Immoral

Trafficking (prevention) Act (IT(P)A), as enforced by the police, is insufficient to combat this trafficking with any great success' (DMSC, undated).

DMSC has established Self Regulatory Boards (SRBs) throughout sex work venues in Kolkata and other places they operate which

serve as a double check to prevent entry of minor girls and unwilling adult women into sex work, control the exploitative practices in the sector, regulate the rules and practices of the trade and institute social welfare measures for sex workers and their children.

(DMSC, undated)

These boards have links with the departments of Social Welfare, Labour and Health within West Bengal state and seek to make recruitment of young people and people who have been coerced non-viable for sex work venues. This has led to a unique anti-trafficking mechanism designed to reduce harm to young people or people who have been coerced, duped or forced into sex work.

DMSC feels that the central focus should be on the trafficked girl/woman and efforts should be to rescue, repatriate and/or rehabilitate her. DMSC activists, being sexworkers and residing in sex work sites, are uniquely positioned to do this successfully. In areas where SRBs are functioning, trafficking of girls/women for sex work has become unviable for traffickers and other site controllers.

(DMSC, undated)

## Conclusion

Harm reduction does not mean that sex workers want to be 'rescued' and taught how to sew. Sex work is work and in view of this, it should be recognised that sex workers need equal protection under law. It is important to challenge the harms caused by bad law and stigma and, where possible, to resource peer-led initiatives which provide supportive services that are of relevance to sex workers. The over-arching approach to harm reduction and sex workers should be to champion their human rights.

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# HARM REDUCTION IN SUBSTANCE USE AND HIGH-RISK BEHAVIOUR

International Policy and Practice

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