

DECRIMINALISATION
— OF —
*Sex*work
— IN —
NEW ZEALAND



Written by
NZPC
New Zealand Prostitutes Collective

What is decriminalisation

in the New Zealand context?



Before 2003, most activities related to prostitution were criminal and/or offences: brothel keeping, living on the earnings, procuring and soliciting for the purposes of prostitution in a public place.

Sex workers, not their clients, were liable to prosecution, and the possession of safe sex literature and condoms was sometimes used by police to contribute to a pattern of evidence to achieve a conviction. Sex workers who were convicted carried the stigma of that conviction and this would stand in the way of alternative work.

The Prostitution Reform Act (PRA) decriminalised sex work in 2003. It changed the law from a punitive approach that harmed sex workers and made them vulnerable to coercion, to a rights

based approach which **promoted sex workers' welfare, health and safety**, while enabling them to be protected from exploitation.

Facilitating people under the age of 18 years into sex work remains illegal, but **young people** are not themselves liable to prosecution.

Sex workers are **not required to register** with any authority. Sexual health check-ups are not mandatory, are organised by the individual sex worker, and therefore remain confidential.

Emphasis is based on the promotion of safe sex and it is compulsory for brothel operators to display safe sex information in these workplaces.

The PRA allows sex workers to work for themselves or with other sex workers. They can be managed by brothel operators, and hire drivers, receptionists and security. These relationships are governed by contract, employment, and **labour law**.

Brothel operators who manage

one or more sex workers must have a certificate, issued and held in confidence by the court. This permits them to hire sex workers, and live on the earnings generated by the commercial sexual services they provide

Sex workers and brothel operators are allowed to advertise for staff, promote their venue, identity and set pricing – but not advertise explicit commercial sexual services except in adult fora. However,

they can promote the name of their business and their personal descriptions in most daily newspapers.

Sex workers can work for themselves, with other sex workers in groups or they can work within large managed brothels. They can operate from a **home based business**, under home occupation rules, or meet clients though street based sex work in public places.

Decriminalisation means New Zealand's sex industry is controlled by the same legislative framework that is common to all other industries.

There are occupational, safety and health, and labour laws - and now guidelines designed specifically with sex workers, brothel operators, and clients in mind.

People new to sex work are no longer vulnerable to being misled by euphemisms promoted by third parties – including commonly used terms in a criminalised environment such as massage or escort.

They can **seek out information** and **talk frankly** about the real nature of sex work, share tips and strategies for maintaining safety, then decide whether it is for them or not. New sex workers can obtain support and gain confidence, **reducing their vulnerability** to manipulation, and enhancing their opportunity for greater occupational safety and health in the context of sex work.

While decriminalising sex work does not, of itself, reduce wider societal violence, there is strong evidence that sex workers feel more able to refuse unwanted clients and have **greater access to justice**.

Sex workers feel **more able to contact the police** either **to prevent violence** being committed against them or to report it. Because paying for sexual services is not against the law, clients can also alert authorities to situations which appear to be illegal.

Police relationships are focused on protecting sex workers from exploitation. Sex workers feel more **able to reach out for help**. The police no longer have a role where they are bound to enforce laws against sex workers for their sex work. The **police also value the change** in the relationship dynamics. They are no longer charged with collecting the names of sex workers and registering them on a database and can work with sex workers to solve crimes such as violence.

The Prostitution Reform Act 2003 recognises that sex workers should have choice about where they work, the conditions they work in, and control over the commercial sexual services they provide.



Because sex work is not illegal, sex workers can spend more time assessing situations, and **discuss frankly with clients** the services they are willing to provide, and the fees. It is important that sex workers are able to avoid potential harm by **reducing the risk of misunderstandings and danger**.

In line with other criminal law, The Prostitution Reform Act 2003 allows sex workers to withdraw consent to provide sexual services at any time, with **penalties for anyone who induces or compels** someone to provide commercial sexual services.

Since the law changed, sex workers working on their own, in brothels, from home or street-based, report feeling **more able to refuse unwelcome clients**.

Sex workers feel **more supported by the law to negotiate safer conditions** – including negotiating for safe sex – without having to fear that their next client is an undercover police officer seeking to entrap them. The absence of fear of the police and imminent arrest has reduced the pressure on sex workers.

The law grants territorial authorities, such as city councils, **powers to regulate signage** and where brothels can operate. Some city councils have introduced bylaws related to the **location of brothels**, while others have relied on existing district plans governing general business operations.

Tensions related to the location of brothels have usually been prompted by moral objections. Where other **disputes** occur, e.g. over shared driveways or lifts in apartment buildings, these have usually been **resolved by** body corporates. In other disputes, courts have decided either in favour of city councils or brothels. Either way, the overarching Prostitution **Reform Act does not determine the location of brothels or street based sex workers**.

After decriminalisation, the **number of street based sex workers** remained **about the same**, although some workers moved indoors as they no longer had to avoid police registration schemes in order to advertise. Not all sex workers have the resources to work indoors – either lacking a boss willing to hire them, or the means to support their own place of work. Street based sex work has **not spread beyond areas** that it traditionally occupied.

The number of young people working has not increased.



Currently, councils do not have the power to determine where street based sex work can occur and work with sex worker organisations to resolve neighbourhood conflicts. But it is possible that in the future councils will gain powers to specify areas where sex workers are prohibited from doing street based sex work. There is official agreement that street based sex work needs to remain decriminalised.

Most **sex workers see themselves as independent contractors**. They refer to their workplace, and to good and bad managers in brothels. There is **no significant evidence of organised crime**, and Immigration New Zealand reports **no evidence of trafficking**.

Decriminalisation has created high expectations of workplace safety, and a culture of whistle blowers. Clients, sex workers and brothel operators are more able to report, without legal backlash, problems to officials. Exploitation can be addressed and in 2014 a sex worker successfully brought a sexual harassment case against a brothel operator and was

compensated US\$21,500. The brothel operator was also ordered to undergo training in relation to their obligations under the Human Rights Act 1993.

Medical Officers of Health have powers to inspect brothels and respond to complaints. Police may obtain warrants to search brothels if there are grounds for believing people aged under 18 years may be engaged in sex work, or if the operator does not have a current, Operators Certificate. The District Court may decline applications for certificates if an operator has been convicted of an offence under: the 1961 Crimes Act, punishable by two or more years' imprisonment; the 1983 Arms Act punishable by imprisonment; or the 1975 Misuse of Drugs Act.

Decriminalisation is about **protecting, not prosecuting, young people** who are aged under 18 years involved in sex work.

It provides for young workers to **access social programmes** to widen their choices beyond the sex industry, and for agencies to adopt a practical approach to

safe sex and harm minimisation. There is also assistance to access financial support, emergency and long-term accommodation, and suitable drug and alcohol treatment.

Decriminalising sex work in New Zealand has empowered sex workers to combat exploitation. It has created an environment that safeguards their right to occupational safety and health. Sex workers now have a voice in all fora in New Zealand.

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The New Zealand Prostitutes Collective was instrumental in advocating for the law change, and they talk about the partners, politicians, and the political process they engaged with in order to create world leading law reform with the passing of the Prostitution Reform Act 2003.



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