

Prostitution Reform Bill

Member's Bill

Explanatory note

Overview

This Bill recognises the need to reform the law relating to prostitution in New Zealand. The aims of the Bill are to decriminalise prostitution, to safeguard 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 public health, and to protect children from exploitation in relation to prostitution.

New Zealand's existing laws pertaining to prostitution are designed to criminalise the sex worker while offering legal protection to the client. Under the current legislation, sex workers are vulnerable to violence and exploitation, with few opportunities for legal redress.

This Bill will remove the legal impediments to the creation of an environment which will protect the occupational health and safety of sex workers and their clients, thereby enhancing public health.

Currently sex industry workers are reluctant to promote safer sex products, in case they are used to contribute to a pattern of evidence to achieve a prostitution-related conviction. The passage of the Bill will reduce the existing climate of fear, allowing sex industry workers greater freedom to participate in community education programmes promoting sexual health and reduction of STDs (sexually transmitted diseases) or HIV.

Prostitution reform

The Bill includes measures to protect children up to the age of 18 from sexual exploitation or sexual abuse in the context of prostitution—a right recognised in the United Nations Convention on the Rights of the Child, which New Zealand has ratified.

Legislative options

The international literature on prostitution law reform draws clear distinctions between the options of *legalisation* and *decriminalisation*, and attributes specialised meanings to both these terms.

Legalisation involves making prostitution legal under certain, State-specified, conditions. This has typically resulted in a two-tiered system (for example, in Victoria, Australia) within which some participants are legal and others are forced to remain illegal, thus stimulating the growth of underground criminal activities. In practice, therefore, this model has failed to achieve the desired level of regulatory control, and has been counterproductive to the interests of workers and clients in the sex industry.

This Bill seeks *decriminalisation*, which involves repealing many existing laws and penalties relating to prostitution. This will bring the industry within the scope of existing legislation (for example, the Employment Relations Act 2000, the Resource Management Act 1991, and the Health and Safety in Employment Act 1992), enabling the application of controls and regulations that govern the operation of other businesses.

The sex industry will still be subject to laws designed to ensure public safety and security. These include provisions in the Crimes Act 1961 and Summary Offences Act 1981 prohibiting street harassment, money laundering of ill-gotten gains, and acts of violence. The Misuse of Drugs Act 1975 will still be available to address drug abuse and misuse in the industry, and the provisions of the Resource Management Act 1991 remain to address any potential nuisance caused by the siting of a sex work venue. Decriminalisation will allow these provisions and protections to be applied more effectively.

Clause by clause analysis

Clause 1 is the title clause.

Clause 2 is the commencement. This Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 sets out the purpose of the Bill, which is to decriminalise prostitution, and thus to create a framework which safeguards the human rights of sex workers, protects them from exploitation, and promotes occupational safety and health. It also protects children from exploitation in relation to prostitution.

Clause 4 defines the terms central to this Bill. Key terms defined include “brothel”, “business of prostitution”, and “commercial sexual services”.

Clause 5 declares that no contract for the provision of commercial sexual services is illegal or void on public policy or other similar grounds.

Clause 6 requires operators of brothels and those running businesses of prostitution to take active steps to ensure the use of prophylactic sheaths and to make available information on safe sex practices. The clause also places an obligation on operators not to use attendance of a sex worker at a medical examination to imply that the sex worker is free of a sexually transmitted disease.

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 provided by that person.

Clause 8 provides sex workers with the right to decline to provide, or continue to provide, commercial sexual services.

Clause 9 prohibits any person from contracting for or being a party to the provision of commercial sexual services by a child under the age of 18. At the same time, the clause allows people to continue to provide necessary counselling and health advice to a child under 18, provided that such persons do not otherwise encourage or facilitate that child’s participation in the sex industry.

Clause 10 effectively decriminalises the sex industry by repealing the key statutory and regulatory provisions.

Clause 11 provides for the consequential repeal of the enactments listed in the *Schedule*.

Tim Barnett

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

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. 10

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 5

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 10

(b) any person who,—
carries on a business of providing commercial sexual services

child means a person who is under 18 years 15

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: 20

(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 25

(ii) the making of an accusation or disclosure (whether true or false) about the misconduct of any person that is likely to damage seriously the reputation of the person against or about whom the accusation or disclosure is made: 30

(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: 35

(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 40

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 5

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. 10

5 **Contract for provision of commercial sexual services not void**

Subject to the provisions of this Act, no contract for the provision of commercial sexual services is illegal or void on public policy or other similar grounds. 15

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— 20
- (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 25
 - (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 30
 - (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. 35
- (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. 5

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. 10
- (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 15

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. 20

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. 25
- (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. 30
- (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 35

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. 5

Repeals

10 Repeals

The following enactments are repealed: 10

- (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 15
(SR 1987/52):
- (f) Massage Parlours Regulations 1979, Amendment No 2
(SR 1991/193).

11 Consequential repeals

The enactments specified in the **Schedule** are consequentially repealed. 20

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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.