

The New Zealand model: protecting the safety, rights and health of sex workers

a briefing
from SCOT-PEP

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New Zealand decriminalised sex work in a single act of legislative reform in 2003; New South Wales, in Australia, achieved decriminalisation in 1995 through a series of small reforms. Since then, this has been come to be known as the ‘New Zealand model’, and has been praised by women’s rights organisations, human rights organisations, and international bodies like the UN and WHO as the best legal approach to protect the safety, rights, and health of people who sell sex.

The principal aims of the Prostitution Reform Act (2003), which decriminalised adult sex work in New Zealand include; the safeguarding of the human rights of sex workers; the protecting of sex workers from exploitation; the promotion of the welfare and occupational safety and health of sex workers; the creation of an environment that is conducive to public health; and the protection of children from exploitation in relation to prostitution. Many of those in support of the law reform made clear that they were not condoning the existence of prostitution in society, but were motivated by a harm minimisation and practical approach¹. This approach is one that has been endorsed and recommended by leading agencies working to protect human rights. For example, Human Rights Watch state that their support for decriminalisation is as a result of *‘decades of research on abuses against sex workers in more than a dozen countries, and working closely with sex worker organizations and their representatives. We found that where sex work was criminalized, sex workers are reluctant to report violence and abuse. After looking at evidence from around the world, we concluded that criminalizing other aspects of sex work [e.g clients, managers] can also lead to harm.’*²

Alongside a repeal of harmful laws that criminalised activities like soliciting and brothel-keeping, the PRA includes acts that aim to legally protect sex workers’ safety, health and rights, including

- the right for small groups of sex workers (up to four people) to work together in an informal co-operative, meaning sex workers are legally allowed to work together for safety without needing a manager;
- the right for any sex worker to refuse any client for any reason at any point in the transaction without facing penalties from a manager; a law which emphasises that New Zealand treats sex workers’ consent as crucial;
- the requirement for brothel operators to apply for an operator’s certificate in order to ensure that they have not been convicted of any serious offences, such as violent crimes or sexual offences;

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1 Jordan, J., (2005) ‘Sex Industry in New Zealand: A Literature Review’ sponsored by the NZ Ministry of Justice, Wellington

2 <http://www.hrw.org/news/2014/06/18/canadas-prostitution-bill-step-wrong-direction>

- the requirement for brothel operators to adhere to labour laws such as the occupational health and safety guidelines that were written in consultation with sex workers, and which include (for example) the rule that managers must always provide ample safer sex supplies and cannot levy fines or any other penalty to sex workers who refuse a client;
- the right for any person to leave sex work and access social security immediately, without having to be subject to the waiting period penalty that they would have if they had 'voluntarily' left another job.

The New Zealand model protects sex workers' safety, and reduces the risk of violence and exploitation.

Prior to the 2003 law, street-based sex workers and their clients were at risk of arrest, and women had to work in isolated, unlit areas 'to avoid detection. Indoor sex workers were forced to work alone or risk arrest as a result of brothel-keeping laws, and sex workers who worked for a manager were not protected from harassment or exploitation, because labour laws didn't cover their workplaces. The New Zealand model has meant that both street-based and indoor sex workers can work with friends, and no longer have to hide from the police – making workers less vulnerable to violent individuals and more likely to report violence to police. Sex workers who work for a manager are now protected by employment laws that cover workplace safety and forbid harassment. Fines and fees imposed on sex workers by managers were found to have decreased as a result of the law³.

The New Zealand government conducted an evaluation into the success of the law in 2007, and discovered that sex workers were indeed using the rights that the 2003 law had sought to protect. Sex workers who are employed by managers report that, as a result of the law, they feel more able to refuse a client, and that they now expect – and receive – support from their managers in doing so⁴. Over 90% of sex workers contacted in the evaluation stated that they felt they now had employment rights, health and safety rights, and legal rights⁵. That includes street-based sex workers, of whom 90% said they felt they had employment rights, and 96% said they felt they had legal rights⁶. In qualitative interviews, sex workers revealed that these new rights meant they felt they had the right to refuse a client, and protected them from violent attacks⁷.

Finally, where sex workers' rights are infringed, they now have full access to the justice system. For example, a sex worker in New Zealand successfully won a sexual harassment case against her manager with the judge commenting: '*Sex workers are as much entitled to protection from sexual harassment as those working in other occupations... Sex workers have the same human rights as other workers*'⁸. To bring – let alone win – a sexual harassment case would not have been possible in a criminalised workplace, where managers are not covered by labour law. A legal academic noted, '*This case highlights the concrete protections that the law can provide – when sex work law is reformed – to those in the sex work industry.*'⁹

3 http://www.gaatw.org/publications/MovingBeyond_SupplyandDemand_GAATW2011.pdf, p44

4 <http://www.otago.ac.nz/christchurch/otago018607.pdf>, p12

5 <http://www.otago.ac.nz/christchurch/otago018607.pdf>, p139

6 *ibid*

7 *ibid*, p13

8 <http://ohrh.law.ox.ac.uk/sex-workers-equally-protected-from-sexual-harassment-as-other-workers-says-new-zealand-case/>

9 <http://ohrh.law.ox.ac.uk/sex-workers-equally-protected-from-sexual-harassment-as-other-workers-says-new-zealand-case/>



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The New Zealand model is leading the way in protecting the health of sex workers and wider public health.

The World Health Organisation has repeatedly called for decriminalisation of sex work as a vital public health measure. This recommendation was recently backed by evidence produced in a series of papers on sex work and HIV in internationally renowned Medical Journal, The Lancet, which evidenced the links between criminalisation of sex work and poor health outcomes for both sex workers and the wider population. The Lancet study found that *'decriminalisation of sex work could have the largest effect on [HIV], averting [up to] 46% of infections over the next decade through combined effects on violence, police harassment, and safer work environments'*¹⁰. The authors review over 800 recent studies addressing human rights violations against sex workers, HIV, law and policy, concluding that criminalisation of sex work fuels and fosters human rights violations and thus increases sex workers' susceptibility to HIV, as well as violence and human rights violations. Furthermore, the study finds that partial criminalisation, including the criminalisation of clients and third parties has similarly devastating effects on sex workers human and health rights.

Following examination of 48 countries to assess the impact of laws, legal policies and law enforcement practices in the context of sex work, UNDP concluded that; *'evidence from [jurisdictions]... that have decriminalized sex work – New Zealand and New South Wales (Australia) – indicates that the approach of defining sex work as legitimate labour empowers sex workers, increases their access to HIV and sexual health services and is associated with very high condom use rates.'*¹¹

In qualitative interviews, sex workers said that they felt the law gave the increased powers of negotiation in insisting on safer sex with clients, and beyond the issue of HIV, sex workers reported that the law is good for their mental health, *'allowing them to feel supported and safe'*¹². One sex worker interviewed by researchers described an aspect of how that works: *'It definitely makes me feel like, if anything were to go wrong, its much easier for me to get my voice heard. And I also feel some kind of hope that there's going to be more tolerance of what it is to be a sex worker. And it affects my work I think, because when I'm in a room with a client, I feel like I'm deserving of more respect'*¹³.

There has not been an increase in sex work or trafficking in New Zealand – but a shift in the sex industry that indicates greater autonomy of workers.

One of the concerns about the PRA was that it would lead to an increase in the number of people working as sex workers in New Zealand. This has not transpired, with the number of sex workers remaining the same as prior to the law¹⁴. There continues to be no evidence of trafficking into the sex industry in New Zealand,¹⁵ but the PRA has allowed for migrant sex workers to make use of sex worker health services (particularly those run by migrant groups or the New Zealand Prostitutes Collective) more easily, a relationship that is vital in ensuring sex workers with insecure residency status are not isolated from health and other service provision¹⁶ and able to report concerns in a safe environment. The importance of decriminalisation in this context has previously been noted by The Global Alliance Against Traffic in Women (GAATW),

10 [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(14\)60931-4/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(14)60931-4/fulltext)

11 <http://www.undp.org/content/undp/en/home/presscenter/pressreleases/2012/10/18/new-un-report-takes-a-stark-look-at-links-between-sex-work-hiv-and-the-law-in-asia-and-the-pacific.html>

12 <http://www.otago.ac.nz/christchurch/otago018607.pdf>, p13

13 <http://www.otago.ac.nz/christchurch/otago018607.pdf>, p118

14 <http://www.otago.ac.nz/christchurch/otago018607.pdf>, p35–36

15 <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/13-trafficking>

16 Roguski, M., (2013) 'Occupational Health and Safety of Migrant Sex Workers in New Zealand', <http://www.communityresearch.org.nz/wp-content/uploads/formidable/Roguski-2013-OSH-of-migrant-sex-workers-in-NZ.pdf>, p33.



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who have stated: *'decriminalising sex work has the potential to assist anti-trafficking efforts... Sex workers would be more enabled to practice their rights and feel safer about reporting concerns'*¹⁷.

What has happened in New Zealand is that there has been a shift in the way in which sex workers chose to carry out their work. Because the PRA makes it legal for sex workers to work with small groups of friends – safely and convivially, without fearing arrest – more sex workers have chosen to work in this way over working for a manager¹⁸. The New Zealand government's evaluation of the PRA shows that decriminalisation has led to a decrease in larger commercial brothels, and allowed sex workers' more autonomy in organising their work.

It's not about 'encouraging' sex work, it's about the safety of people who sell sex.

There is no legal model anywhere in the world that has been shown to increase or decrease the number of people who sell sex: all that laws can change is whether people do sex work in safe or dangerous conditions. Specifically, an Australian study found that *'legal approaches didn't affect the number of sex work businesses or clients, but that it did affect sex workers' working conditions and access to healthcare.'*¹⁹ Workplaces in a decriminalised legal system – like that of New Zealand – ensures that workers can experience the highest levels of safety and health.

As the World Aids Campaign states, *'arguing for the decriminalisation of sex work does not have to mean endorsement of sex work... criminalising won't eradicate the industry, nor alter the set of power relations that may be associated with it. It recognises that the laws that criminalise sex work punish women and particularly women living in poverty, and women of colour most severely and create a dangerous environment for working and living.'*

Laws that uphold safety were supported by the majority of the Scottish public in polling undertaken on behalf of SCOT-PEP by Survation in 2014. 68.5% backed decriminalisation, and 86.8% agreed that sex workers should be able to work together for safety without facing arrest. New Zealand was the first country in the world to give women the vote on equal terms to men – it's time for Scotland to follow New Zealand's progressive lead once more, and affirm sex workers safety, rights and health.



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17 http://www.gaatw.org/publications/MovingBeyond_SupplyandDemand_GAATW2011.pdf, p45

18 <http://www.otago.ac.nz/christchurch/otago018607.pdf>, p6

19 http://www.gaatw.org/publications/MovingBeyond_SupplyandDemand_GAATW2011.pdf, p34