

DECRIMINALISING PROSTITUTION IN NEW ZEALAND

- the campaign and the outcome

by Tim Barnett MP. January 2007.

In 2003 New Zealand became the first country in the world to decriminalize prostitution. This 2 page document traces the reasons for and contents of that law reform, and its outcomes to date.

The context

New Zealand is a small and highly urbanized country of 4 million people, situated in the South Pacific 11 hours flight from the US West Coast, 3 hours from Australia's East Coast and 6 hours from Antarctica. Its population is 75% of European extraction, 17% Maori (its indigenous people), Asian and Pacifica.

The activity

About 6000 people in New Zealand work regularly or occasionally as sex workers. Approximately 65% work in brothels; 10% are street-based, in a total of 8 locations in the 3 largest cities; 25% are home-based or work from rental properties in small groups. About 90% are women and some of the remaining 10% are transgender. Their clients seem to come disproportionately from people visiting from overseas or from elsewhere in New Zealand, from those with physical or mental disabilities and from those with relationship difficulties.

The old law

Based on the 1880s criminalization of a legal, small operator-dominated sex industry, in line with similar movements in British law, New Zealand's pre-2003 law on prostitution outlawed activities which were inevitable in the process of prostitution (e.g. soliciting someone to be a client, taking a profit from prostitution) without outlawing prostitution itself. The introduction of the legal concept of massage parlours in the 1978 Massage Parlours Act enabled a state-endorsed sex industry to operate behind the façade of a superficially innocent massage activity.

The burden of that criminalisation fell on sex workers themselves, with arrests running at an average 200 per annum (mainly of transgender street workers). The only significant contact between the state and the sex industry was through the Police.

The campaign for law reform

In the 1980s a growing awareness and presence of HIV in New Zealand fortunately coincided with a Labour Government. Focused on male to male sexual contact, the sharing of needles by intravenous drug users and the sex industry as being the three major vectors for the spread of the virus, in a period of 4 years the Parliament decriminalized gay sex, the Labour Government was the first in the world to introduce legal and nationwide needle exchanges and the same Government funded the New Zealand Prostitutes Collective (NZPC) as part of its sexual health programme. From that NZPC funding grew international networking and the importance of an appropriate legal environment became more obvious. By 1996 a lobby coalition of women's, human rights and public health interests had emerged; by 1999 a Bill was ready for introduction to Parliament, with me as sponsor. In 2000 it was drawn from the Members Bill ballot and received its first reading, passing by 87 to 21. It took 2 ½ years to pass through a Select Committee, including many days of hearing dozens of public submissions. Both at Committee and in the subsequent stages, amendments were made to satisfy the genuine concerns of some interest blocs; one significant addition was a Review Committee to report back 5 years after the law passed. Opposition mainly came from fundamentalist Christian groups and some feminist organizations; the Police were generally neutral.

The Prostitution Reform Act eventually passed on June 28th 2003, 60 votes to 59 with 1 abstention, and largely came into effect three days after that.

Decriminalisation and legalization

The new law – passed in 2003 - was based on the decriminalisation of prostitution model first used in the state of New South Wales, Australia in 1996. It was built around the principle of harm minimization – identifying the genuine harms caused by prostitution and writing law and policy to minimize them. Thus, for example, penalties for coercion or being the client of an under-age sex worker were increased significantly, but the registration of sex workers was stopped since it had no useful purpose. Decriminalisation involves simple and straightforward law contained in one Act, supported by the active intervention of a range of state agencies, treating the sex industry in a similar way to many other sectors in society. In contrast, legalization focuses on the unique nature of prostitution, and uses significant regulation in an attempt to control it. The concept of “legal” and “illegal” parts of the sex industry remains.

The new law

Toughened

- laws on being the client of a sex worker aged under 18 (24 prosecutions to date),
- laws on coercion into, or to remain in, prostitution;
- laws on operators in the sex industry promoting safer sex and clients and sex workers practising it;
- controls on the advertising of prostitution;
- controls on prostitution activities by temporary residents and potential migrants.

Abandoned

- the old bans on prostitution-related activity, which were confusing and inconsistently applied;
- police registration of brothel-based sex workers and of street workers;
- the old ban on sex workers with prostitution- or drug-related convictions being able to work in brothels;
- licensing of all employees in the sex industry.

Protected sex workers by

- allowing membership of trade unions, the holding of an employment contract and legal contracts to be formed (and ended) with clients;
- ensuring coverage of the sex industry by the Government agency Occupational Safety and Health, with production of a voluntary Guideline for the industry;
- ensuring coverage of the sex industry by public health and labour inspectors and other relevant Government agencies;
- ceasing arrests for soliciting;
- refocusing policing of the sex industry on addressing genuine harms;
- reducing barriers to exiting the sex industry, for example by allowing immediate access to Government unemployment benefits.

Gave local government more powers to

- influence the location of a brothel;
- control signage of brothels.

Had built-in monitoring of its impact, with a Prostitution Law Review Committee being established in December 2003, made up of sex industry, voluntary sector and government department representation. It is serviced by the Ministry of Justice and is being accompanied by major research projects.

What has happened since

Some things haven't changed:

e.g. Media fascination with prostitution;
The numbers of sex workers;
Demand for sexual services.

Some things have changed a lot:

e.g. Arrests for soliciting have stopped;
Focus of prostitution-related policing is harm-related; police-sex worker relationships are better;
Brothels now have to factor employment rights & health/safety guidelines into their operation.

Some things should have changed more than they have, but give it time.....

e.g. Enforcement of the law criminalizing clients of under 18 year olds.

For further information

www.timbarnett.org.nz for campaign information and the latest detailed update on progress since law reform
www.legislation.govt.nz or www.knowledge-basket.co.nz for the text of the Prostitution Reform Act 2003
www.justice.govt.nz/prostitution-law-review-committee for the latest on the work of the Committee