

REFLECTION FROM THE FIELD

It's work, it's working: The integration of sex workers and sex work in Aotearoa/New Zealand

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Abstract

The New Zealand Prostitutes' Collective played a lead role in the development of sex work policy and law in Aotearoa/New Zealand. This commentary examines the Collective's experience and observations in working with the law at a practical and theoretical level. It addresses successes as well as areas that need improvement to uphold the aims of the Prostitution Reform Act 2003.

Introduction

The New Zealand Prostitutes' Collective (NZPC) was founded in 1987 and was instrumental in designing, advocating for, and – in many ways – assisting in the implementation of the change in law that resulted in the decriminalisation of sex work in 2003. NZPC is a peer-based organisation, and is comprised of sex workers with experience of working before and after the Prostitution Reform Act 2003 (PRA) was passed. We are diverse across age, gender, and ethnicity, and, collectively, we are people who have had extensive experience in all sectors of sex work. While NZPC drafted the original Bill, it was refined by Parliamentary Counsel; we acknowledge that there are imperfections in the law, as we could not control the Bill as it went through Parliament, and sections were added that we disagree with.

This commentary focuses on the gains of the PRA that we, as Aotearoa/New Zealand's only nationwide sex worker organisation, perceive them. Where possible, we cite evidence based on quantitative and qualitative research conducted in Aotearoa/New Zealand; but we are also informed by our ongoing daily interactions with sex workers who have meaningful contact with our community bases and outreach services. As such, this perspective represents the opinions of sex workers themselves and data obtained directly from sex workers, rather than the opinions of others about sex workers.

Allowing the voices of sex workers to be heard is one of the aims of NZPC. Therefore our comments will mostly reflect the experiences of sex workers who are allowed to work in Aotearoa/New Zealand. New Zealand citizens and permanent residents, as well as Australians, are protected by the PRA, but migrant sex workers on a temporary visa (Visitors Visa, Work Visa, Working Holiday Visa, Student Visa, etc.), do not reap the full benefits of decriminalisation, and are prohibited by law from working as sex workers (Roguski, 2013; see also Armstrong, this volume).

There are claims by those who seek to abolish sex work that the passage of the PRA has not helped sex workers (Subritzky, 2013; Valisce, in Murphy, 2016). We strongly disagree with these claims, and state that evidence-based research indicates otherwise. Indeed, our ongoing experience confirms that what has become known as the New Zealand Model is a necessary first step to enhance the safety, health, and well-being of sex workers, as well as to reduce stigma and discrimination against sex workers.

This commentary first examines the historical context of the Aotearoa/New Zealand sex industry prior to decriminalisation. It then covers the current, post-decriminalisation situation, including the interactions sex workers have with the police and other authorities, and how these have changed for the better. It addresses issues faced by migrant sex workers who are not covered by the PRA, the changes in street-based sex work, how the lack of a register protects sex workers and makes it easier for them to leave sex work, and how sex workers have better sexual health, are able to avoid or report violence, and have better employment relationships. It includes an interview conducted with a Māori sex worker who gave their permission for it to be reproduced here.

Historical context

Before 2003, most activities related to sex work were criminal and/or offences: brothel keeping, living on the earnings, procuring, and soliciting for the purposes of prostitution in a public place (Crimes Act 1961, s.147-149; Summary Offences Act 1981, s. 26). Under these laws, sex workers, not their clients, were liable for prosecution (see Schmidt, this issue, for a full discussion). Possessing sex worker focussed resources, including safer sex promotional material and condoms, was sometimes used by police to contribute to a pattern of evidence to achieve a conviction (Healy, Bennachie & Reed, 2010). A conviction for a sex work related offence had far-reaching effects on a range of important areas of life. These included future employment prospects, the custody of children, the ability to obtain insurance, and to travel internationally (Jordan, 2010). Sex workers working within a massage parlour would lose their job if convicted of a prostitution related offence. Social stigma and being outed as a sex worker publicly in court reports and public media also had a negative impact on the lives of sex workers, making it difficult to find and/or retain other employment. For instance, a bank clerk who was charged with soliciting lost her position with the bank, as a result of their name appearing in the newspaper (Healy, personal discussion with sex worker, March 2017).

In Aotearoa/New Zealand, it is also important to examine the effects of the change of law on sex workers who are Māori. An evaluation of the impact of the PRA (Abel, Fitzgerald & Brunton, 2007) found that Māori made up just under one third of the 772 sex workers surveyed across all sectors of the sex industry. While most Māori sex workers were working indoors, either for themselves or in managed brothels, nearly two-thirds of the people involved in street-based sex work identified as Māori (Abel, Fitzgerald & Brunton, 2007). From 1997 to 2000, Māori sex workers received more than half of all soliciting convictions, more than three times the rate of conviction for European New Zealanders, while Pasifika people received almost half as many as Maori. 'Other', which included those who did not fit into those three groups, accounted for the remaining 5% of the convictions during that period (Jordan, 2005). Although men received 54% of convictions in that period, Jordan (2005) notes that these sex workers were mostly transgender women (mis)identified by the police as 'men', and that the pattern of convictions shows a focus on street-based sex work. These transgender women were predominantly Māori.

Police often focused on street-based sex workers as the most visible part of sex work. Before decriminalisation, when Māori sex workers faced violence or exploitation, NZPC was aware that they were unlikely to seek help from police, given the illegality of their sex work-related activities. Not only were outdoor sex workers targeted by the police, but indoor sex workers had their identities as sex workers held on a police register, and were monitored as being a part of the criminal underworld. In many cases, these names were not able to be removed when the

individual stopped working as a sex worker (Healy, Bennachie, & Reed, 2010; PLRC, 2005) and their involvement in sex work was often reported as an outcome of a police check. This was particularly harmful when seeking other employment that involved official security checks (Laurie, 2010).

While most sex workers preferred to work indoors, options for women were mostly limited to managed massage parlours and escort agencies. There was friction between those sex workers who wanted to manage their own sex work and work independently in home-based settings, and licensed massage parlour operators, who felt they alone had official state endorsement under the Massage Parlours Act 1978, which stated that these operators were 'fit and proper persons' to operate a massage parlour (which were effectively brothels). These operators would complain to the police about those working privately, claiming they were taking business away from the 'legitimate' sector, licensed under the Massage Parlours Act 1978. The police would, in turn, insist that home-based sex workers either apply for massage parlour licences or close down. It should be noted that massage parlours were usually zoned to non-residential areas, and that finding premises in these areas was beyond the means of individual sex workers. In addition, a number of sex workers were prevented from working in licensed massage parlours because of drug or sex work related convictions (Healy, Bennachie, & Reed, 2010).

Licensed operators would advertise in daily newspapers to recruit women for work in 'massage parlours' or 'escort agencies'. Even at the point of hiring, these operators could not openly declare that the real purpose of the position was to provide commercial sexual services. This resulted in people being ill prepared for sex work, as they were unaware of what type of work they would actually be doing. Usually a 'masseur' who was already working there would be asked by the operator to explain the true nature of the work. In this way, operators believed that they were distancing themselves from brothel keeping, procuring, and living on the earnings of prostitution. If the link between massage parlours and sex work was established, and these operators were arrested, they could be convicted of these charges and sent to prison.

Nevertheless, integrated prices, which included entry to the massage parlour as well as fixed client/sex worker time periods, began with the rise of credit card payments on 'zip-zap' machines in the late 1980s. Management set these 'all inclusive' fees, with the expectation that sex workers would provide 'the works' – meaning oral and vaginal sex. Previously, in a cash society, the client would pay for entry to the parlour at the door, then pay the sex worker the fee for their services separately. With the introduction of credit card payments, it was easier for the parlour operator to integrate their own entry fee and the fee for the sex worker's services in one payment on the credit card.

Maintaining the façade of 'massage' parlour or 'escort' agency was a way in which management would attempt to distance themselves from illegal activity of operating a brothel. Prostitution was not illegal per se, and clients could legally offer money for sexual services. However, most activities related to sex work and its organisation were illegal (Healy, Bennachie, & Reed, 2010: 45-55).

Sex workers were wedged into an unsupportive environment where sex work was not able to be officially recognised or freely discussed. As a consequence, relevant conditions for their occupational safety and health were sometimes undermined. There were no occupational safety or health guidelines specified for sex work practices, such as descriptions about the conditions under which condom slippage may occur, including regularly checking the condom when the service has been occurring for more than five minutes, or how to perform 'trick' sex (Occupational Safety and Health Service, 2004).

Pania's story

I'm an indigenous, Māori sex worker in Aotearoa/New Zealand. I've worked for six years in brothels, and for myself with other friends, who are also sex workers, from a shared apartment. It's much easier to have these choices of places to work.

I like that I can choose where I can work and don't have to hide away somewhere dodgy to avoid the cops. I'm not on any database held by the cops about sex work.

Decriminalisation means I can choose to turn down clients I don't want to see, for any reason, and my boss can't pressure me. I don't have to worry a client may be an undercover cop, so I can be up-front about what our expectations are, such as using condoms.

My clients know they have to behave or they can get into trouble because I will call the cops and they will come and help me. I also really like that my clients aren't scared of being raided, so things are more relaxed, and easier to manage.

I've had clients who have come from countries where it's illegal to be a client, and they have been on edge, scared, and difficult to manage. I like that I can talk with other sex workers, and share information and stories with them.

Pania, Wellington sex worker, interviewed at NZPC, 2015

Current situation

The PRA decriminalised sex work in 2003, moving away from a repressive approach that harmed sex workers and made them vulnerable to criminalisation, towards a rights based, integrative approach (Östergren, 2017) which promotes sex workers' human rights, welfare, health and safety, while enabling them to be protected from exploitation (PRA, 2003). As such, the PRA radically improved the environment for sex workers in Aotearoa/New Zealand.

The PRA creates a situation whereby all sex workers have significantly more choice about where they work and the conditions they work in, and more control over the commercial sexual services they provide. Through monitoring advertisements in newspapers and on-line since 2003, NZPC has observed that more sex workers are electing to manage their own sex work; since 2003, the increase in independent private sex workers has been striking. While it is still true that the majority of sex workers work in managed situations with brothel operators, there has been a tremendous growth in the number of people opting out of the bigger brothels to work for themselves, or with other sex workers, from their home or from an apartment. There has also been an increase in small boutique brothels where clients make an appointment, rather than walk in off the street. This growth in the number of people managing their own sex work or in small boutique brothels does not indicate an increase in the number of sex workers (Abel, Fitzgerald, & Brunton, 2009).

Sex workers managing their own sex work reduces opportunities for exploitation by third parties, who know they must create conditions that are more appealing, as sex workers will otherwise work for themselves or go elsewhere. This population of independent sex workers is highly visible through on-line advertising. The barriers to making contact with them as a peer support organisation are reduced by not having to go through management as an intermediary. Independent sex workers organise their own advertising, places to work from, and managing relationships with their clients.

There have been allegations made that these independent sex workers, or 'privates', are not working for themselves, but are being controlled by traffickers (McGregor, 2017). NZPC conducts outreach to the places that these workers operate from to deliver information and

supplies, and these sex workers also visit NZPC branches around the country. While their individual situations and conditions of work vary, access to these sex workers by NZPC is direct, and it is usually immediately apparent that they are free to talk and seek support, and usually control their own phone numbers and advertising. In discussions, they make it clear that they chose to work as sex workers. By listening to what these sex workers themselves say about their lives, we therefore conclude they are not victims of trafficking.

Sexual health

The PRA states (s. 25(1)) that, ‘Every person designated as a Medical Officer of Health by the Director-General of Health under the Health Act 1945 is an inspector for the purposes of the Prostitution Reform Act.’ Medical Officers of Health may, under the PRA (s. 24-29), inspect brothels if they wish, and have involved NZPC in the training of health protection officers on how to work with brothel operators and sex workers. These Officers build relationships with brothels in a non-threatening manner, and generally visit only in response to complaints.

Importantly, sexual health check-ups are not mandatory (as they are under a legalised model - see Sweetman, this issue), but are organised by the individual sex worker, and therefore remain confidential. NZPC notes that sex workers are highly motivated to take care of their sexual health and present for regular check-ups at NZPC hosted clinics, as well as other services. In-house evaluations completed by NZPC and reported to the Ministry of Health have shown that there has been an increase in the number of sex workers who feel more able to disclose their sex work to these health professionals. No one is allowed to promote the results of a sexual health test as a business tool. Instead of mandatory sexual health checks, emphasis is based on the promotion of safe sex, and it is compulsory for brothel operators to display safe sex information in these workplaces (PRA 2003, s. 8). Both clients and sex workers are required to ‘take all reasonable steps’ to practise safer sex (PRA 2003, s. 9). NZPC is strongly opposed to the potential for sex workers to be fined for not taking ‘all reasonable steps’ to practise safer sex, as this is specific legislation targeting sex workers, and the issue is adequately covered in non-specific laws such as the Health and Safety in Employment Act 2016.

Street-based sex workers

Since decriminalisation, NZPC staff and outreach workers have observed that the number of street-based sex workers has declined in some areas. For example, NZPC was aware that prior to decriminalisation, there were about 50 street-based sex workers in Wellington, yet now outreach workers report there are fewer than ten. Some former street-based sex workers are now working indoors and advertising online, as they no longer have to avoid police registration schemes in order to do so.

While some sex workers prefer street-based sex work, not all street-based sex workers have the resources to work indoors. Some are without homes to work from, or may have children or others sharing their homes, making this option unviable. Others may experience discrimination from brothels, based on their being transgender, being male, their age, their ethnicity, or being a person who uses drugs. Street-based sex work has not spread beyond the areas that it traditionally occupied, with the exception of Christchurch, where the 2010 and 2011 earthquakes destroyed the inner city, which was then fenced off. This had the knock-on effect of dislocating street-based sex work from the area with which it was traditionally associated into nearby residential areas. Nevertheless, since the removal of the cordon around the inner city, street-based sex workers are slowly returning to their traditional areas in Christchurch.

No register

Sex workers appreciate the anonymity provided by the PRA, as the police no longer hold an official register of sex workers (see ‘Val’ in Abel, 2010, p. 318, NZPC conversations with sex workers). This therefore reduces the potential for being involuntarily outed as a sex worker to others, such as future employers. The absence of a register has enabled some street-based sex workers to move indoors to a safer environment, and others to gain employment in other industries, without the risk of their name being associated with sex work when a police check is completed.

Police

Police relationships are now focused on protecting sex workers from exploitation, rather than arresting them for soliciting. Sex workers now feel more able to reach out to the police for help, for example, assisting a Māori street-based sex worker to get money back from a client who refused to pay (Wynn, 2014). There have been prosecutions against police who have committed crimes against sex workers (NZPA, 2009), although such cases are rare. The police also value the change in the relationship dynamics, as they can, and do, work with sex workers to solve crimes such as violence (Armstrong, 2011). Connecting with authorities is mostly voluntary, with a focus on rights and protection, rather than monitoring for criminal behaviours and punitive action. Sex workers are now able to report violence directly to the police, and feel more able to do so (Abel, Fitzgerald & Brunton, 2007).

Instead of being targeted by the police, Māori sex workers, who often reported to NZPC that they felt unable to report crimes against them prior to decriminalisation, are now able to seek support from the police. NZPC Wellington reports that examples of this assistance include police negotiating directly with Māori street-based sex workers about when patrol cars should visit street venues, so as to not scare the workers’ potential clients away and make sex work more difficult for them.

Violence

There are some claims that violence against sex workers has increased since decriminalisation (Valisce, 2016; McGregor, 2017). It is not realistic to expect one law change to eliminate all of the violence that is committed against sex workers. However, there is strong evidence that sex workers now feel more able to refuse unwanted clients, and have greater access to justice. Prior to decriminalisation, only 37% of private workers felt that they could refuse a client; by 2007, four years later, that number had increased to 62% (Abel, Fitzgerald & Brunton, 2007). Sex workers feel more able to contact the police either to prevent violence being committed against them, or to report it being committed (Mossman & Mayhew, 2007). There have been court cases which have held violent people to account for their violence towards sex workers (Mathewson, 2012; McGregor, 2015), and NZPC is aware that police have also engaged with Māori and other street-based sex workers in efforts to stop intimidation and other forms of abuse.

Because paying for sexual services is not against the law, clients are able to discuss and to alert authorities to situations which appear to be illegal (Foobar, 2015). This is effective in terms of perceptions of trafficking, impressions of exploitation, or if safe working conditions have been undermined. Clients contact NZPC and other agencies with reports of these perceptions.

Furthermore, NZPC notes that street-based sex workers have increased levels of personal empowerment. Because they no longer need to avoid police detection, street-based sex workers have more time to assess the safety of a situation and are more empowered to frankly and assertively discuss with clients the services they are willing to provide, as neither soliciting nor paying for sex is illegal. A small number of street based sex workers contract minders to watch out for their safety. There is official agreement that street-based sex work needs to remain decriminalised (Local Government and Environment Committee, 2014). These features mean that sex workers are able to avoid potential harm by reducing the risk of misunderstandings and danger in this environment.

Importantly, with the advent of the PRA, sex workers in New Zealand are not forced to accommodate unsafe conditions in order to protect their clients from being arrested. If they have a bad client (e.g. one who refuses to pay, does things outside the agreed upon parameters, removes a condom deliberately, or becomes violent), sex workers are able to contact the police without fear that their place of work will be watched by the police in order to arrest other clients, as they do in countries where the purchase of sex is illegal. In addition, all sex workers can have other relationships, support family members and partners, and pay their landlords, without fear that these people could, in turn, be threatened with prosecution for living on their earnings. Sex workers may not legally be threatened with eviction for being sex workers (Gira Grant, 2016). However, some stigma still exists, and there is no protection against discrimination on the basis of occupation. Sex workers who are also working in other employment have had their sex work challenged by their other employer (NZPA, 2006).

There is no significant evidence of organised crime, and Immigration New Zealand reports no evidence of trafficking (Prostitution Law Review Committee, 2008). Most sex workers see themselves as independent contractors, referring to their workplace, and to good and bad managers in brothels. In other words, the language they use shows that sex work is work, and the tools they use to address exploitative practices are extensive, including human rights legislation, labour legislation, health and safety legislation, and the justice system. Among sex workers, there is now a sense of entitlement to protection, as opposed to a sense that nothing can be done. However, as it is usually easy for sex workers to find work, some sex workers who have problems with management in one brothel will prefer to move to another, rather than go through official channels. It is very important that the tools noted above still are available to them, if they chose to move to another brothel.

Disputes

Given that the PRA effectively acknowledged sex work as an occupational category, sex workers have been empowered to seek legal redress in situations of alleged exploitation; using official assistance from occupational safety and health and/or labour mechanisms such as mediation services (PRA 2003, s. 10). When disputes occur, they are usually over money owed, or an unfair termination of contract, and a number of sex workers have effectively addressed this through the Disputes Tribunal. NZPC has attended several of these Disputes Tribunal hearings with sex workers. The Disputes Tribunal is low level, and consists of a referee, the complainant, and the defendant. Support people are allowed, but may not speak unless specifically addressed by the referee, and no lawyers may be involved in representing parties from either side (Ministry of Justice, 2017). NZPC has observed that in most cases the parties have settled before a judgement is made; in the remaining cases, sex workers have generally been successful. However, not all sex workers are comfortable making a complaint through official channels, such as the Disputes Tribunal. They want a quick result, and are

sometimes more likely to prefer to move to another sex work venue that is not exploitative. Some are anxious about Court disclosures and prefer to settle out of court if possible (See Sweetman, this issue, for some successful court cases). In some cases, NZPC has mediated between a sex worker and an operator.

Employment relationships

Decriminalisation of sex work removed the lifelong impediment of a stigmatising conviction related to prostitution. These laws allow sex workers to create an environment that they can control, and provide them with more options for safety, including working with brothel operators who provide management and security services, or working with other sex workers as equals in a shared space, or working for themselves in their own home, alone. They can advertise explicitly on adult sites describing specific sexual services they provide. They can also determine the code of conduct they expect in their workplace, and declare their boundaries with clients. These relationships are now governed by contract, employment, occupational safety and health, human rights, and labour law. In practice, it means that those who have experienced injustice know that they now have a range of actions they can take.

Migrant sex workers

The PRA discriminates against migrant sex workers, who may be eligible to work in Aotearoa/New Zealand in any occupation other than sex work (s. 19). A popular view is that these migrant sex workers are a hidden population and are trafficked (Mayson, 2008). The accuracy of this view is questionable. Migrant sex workers, similar to other sex workers, are not hidden, but openly advertise their services online and in newspapers. They must do so in order to have a level of visibility to attract clients. Despite this hyper-visibility, and frequent monitoring by Immigration New Zealand, it has consistently been found that there have been no cases of trafficking in sex work in Aotearoa/New Zealand (Immigration New Zealand, 2017). This discriminatory approach in the law creates vulnerabilities for some of these sex workers. They feel they cannot report incidents directly to support services and authorities without compromising their ability to remain in Aotearoa/New Zealand, either as students or on a working holiday visa.² NZPC outreach services to migrant sex workers build trust among them. NZPC has worked with the police and other authorities to create a safe space where these sex workers can speak up. Nevertheless, the fear remains they will be outed as sex workers and deported.

Conclusion

Sex workers are in a much stronger position with the support of legislation such as the New Zealand Model, with its integrative approach that decriminalises sex work. This model upholds their rights, safety, health, and welfare, while protecting them from exploitation. It also recognises that sex workers do not need only these protections, and that third parties and all other people involved in relationships with sex workers, be they work or personal, must also remain within the ambit of an integrative approach to sex work. The New Zealand Model has created high expectations of workplace safety, and a culture of whistle blowers. A number of sex workers, as well as clients, contact NZPC to inform on malpractices by brothel operators, clients, or even their peers in sex work. Sex workers are more able to report,

without legal backlash, problems to officials, and to seek justice. Exploitation can be addressed through these channels. For some sex workers, there remains, however, an impediment to reporting complaints to officials, as they are afraid of being publicly outed. NZPC has hosted meetings between sex workers and officials to protect the identity of the sex worker. NZPC also accompanies sex workers to police stations, dispute tribunals, and court cases where real identities are required, so as to provide support through these processes. We reassure people that being publicly outed is unlikely to happen, and educate people on managing name and occupation suppression requests.

Nevertheless, it remains important to continue to reduce stigma and discrimination against sex workers. While the change in law has gone some way towards reducing these, both contribute towards societal attitudes that harm sex workers. It may therefore be necessary to further amend human rights law to include 'occupation' as a ground upon which people may not discriminate. Decriminalising sex work in Aotearoa/New Zealand is a step forward.

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Notes

- 1 Pania is not her real name, but the name she chose for this interview. She has given NZPC permission to reproduce it for this article.
- 2 In addition, there are tourists who would not be eligible to work in any occupation in Aotearoa/New Zealand. It should be noted that just as citizens from Aotearoa/New Zealand like to work in other countries as sex workers, other people travel to Aotearoa/New Zealand to work as sex workers.

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