

Review of the Decriminalisation Model in New Zealand

Stand Against Sexual Exploitation

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1) Summary

In 2003, New Zealand changed their laws on prostitution to decriminalise every aspect of the industry. The international community has been fascinated by this policy change and it has been widely lauded as a success. This report interrogates this assumption and demonstrates that there is a huge gap between the reputation of the law and the actual impact of the law itself.

When implementing the 2003 law, parliament was clear that its impact should be fully monitored, particularly after sufficient time has passed, and that the numbers of women in the industry should also be monitored. In answer to an OIA on 24th December 2018 the Ministry of Justice advised in an undated letter that there were no plans to review the operation of the PRA at this time.¹ Further, there has been very limited interim monitoring of the law and contradictory information regarding the numbers of women involved and the extent of harm still present – and even increasing - in the industry.

Alarming, much of what has been written about the application of the New Zealand law has not been based on factual data. To correct this we carried out a series of Official Information Act (OIA) requests over several years and gathered other evidence to ascertain the true impact of the decriminalisation model. We have found that the benefits that resulted from the change in the law have been exaggerated, while its shortcomings ignored, denied, and hidden.

One reason for the misinformation about the impact of decriminalization is that the conversation is completely dominated by the NZPC, who are a lobby group that the Government solely relies on for any issue related to prostitution. There has been pushback against their dominant voice, with a collective of 26 women who came together to state that they did not represent their voices as women involved in the industry.² The NZPC has always advocated for fully normalizing prostitution as ‘work’ and does not provide support for exiting, has no (at least official) contact with the black market of prostitution, and denies the realities of violence and exploitation that occur within the industry. The normalization agenda is promoted using tactics such as reframing their services as ‘business support’, ignoring the issue of exit from prostitution, denying harm including trafficking and underage abuse,

¹ OIA dated 24th December 2018 to the Ministry of Justice. See Appendix 2 for details of all OIAs.

² Lincoln Tan, ‘NZ Sex Workers Write Open Letter to Government Asking for a Minister of Prostitution, 11 June’ *New Zealand Herald* (2018).

rejecting the voices of exited women, amplifying the voices of pimps, glossing over the fact that women do not report violence and exploitation even in the decriminalized regime, and promoting the law as a 'success' while failing to mention that there has been little to no monitoring or intervention.

Several areas have been neglected and are outlined in this report:

Numbers

Tracking of the numbers involved in prostitution has not been proactively monitored, save for the 2008 research of the PLRC, which is likely to be a huge underestimation (2,332) and does not take into account movement in and out of prostitution, the black market, and those who are not in contact with the NZPC. The NZPC have themselves reported engaging with 7,416 'sex workers' in the first half of 2019,³ which is more than three times the PLRC figure.

The role of the NZPC

The NZPC have a contract to gather evidence-based data such as numbers of complaints, referrals, and concerns raised by women in prostitution. They have not carried out their duties under these terms. The Government has confirmed that they do not monitor the performance of NZPC under their contract.

Health and Safety

There continues to be a range of Health and Safety concerns, including coercion into sex acts and/or unsafe sex, lack of protection from HIV, high levels of violence in the industry (with the added barrier that this is not treated as a health and safety issue), mental and physical health issues, and exploitative practices, such as long working hours. Very few reports of health and safety violations are being made and even the issues that have been reported to the Government by the NZPC have not been followed up. There have only been two prosecutions under the law against coercion into sex acts since 2009, despite repeated reports that it happens in high numbers.

³ NZPC Report Jan-Jun 2019, p17.

Inspections and Other Regulatory Obligations

Despite inspections being required under the law, there have been no inspections carried out in the main centres of prostitution, Auckland, Wellington or Christchurch since the PRA 2003 was passed, at least until 2015.⁴ In fact, public health service managers were advised not to be proactive in relation to carrying out investigations⁵ and an OIA in 2018 revealed that no funding has been assigned to carrying out inspections.⁶ Only 11 brothel inspections have ever been made in the whole of New Zealand in the previous 10 years.⁷

Reporting, Policing, Prosecutions

The legislation seems to have had very little effect on reports of violence and abuse, which is readily admitted in the PLRC 2008.⁸ Women continue to avoid reporting and instead simply move establishments. There has only been one prosecution under the NZ law and the Claimant in this case testified that women endure sexual coercion from their “managers” (pimps) but do not report. The NZPC also reports that violence and coercion occurs within brothels. These incidents have not been investigated or followed up.

The Black Market

The reality of gang involvement in prostitution, child exploitation in prostitution, and internal trafficking are all denied by the NZPC. Some acknowledgement of underage involvement and abuse of migrants has been discussed in NZPC reports⁹ but both the NZPC reports and the PLRC 2008¹⁰ admit to having no contact with the black market that exists in New Zealand and is documented in the media, as well as the US Trafficking in Persons Reports.¹¹ The extent of the problem therefore remains unknown and is not monitored.

⁴ DHB replies to OIA dated Jan 2015. Also see NZPC report to the Ministry of Health Jul- Dec 2015 p5, NZPC

⁵ PLRC, ‘Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003’ (2008).

⁶ OIA April 2018.

⁷ OIA Jan 2015 to the New Zealand District Health Boards.

⁸ PLRC (n 4) pp8,9.

⁹ NZPC reports to the Ministry of Health obtained by OIA (see details in Appendix 2).

¹⁰ PLRC (n 5).

¹¹ USDS, ‘Trafficking in Persons Report: New Zealand’ (2004-2020) United States Department of State.

There is little to no support for those affected by gangs and – relatedly – for underage prostitution. An OIA to the Ministry for Vulnerable Children confirmed that underage prostitution was not a target area and no funding had been made available to tackle it.¹²

In relation to trafficking and exploitation of migrants, the NZPC is calling for reform of the law to legalise migrant prostitution, claiming that it will lead to better protections. This is despite the fact that the PLRC 2008 admits to very little reporting amongst NZ prostitutes who are protected by the law (less than 20%).¹³

Immigration officers are the only officials who can enter any premises (for example, to make a surprise visit relating to deportation). However, they respond only to complaints and an OIA attempting to identify how often these visits occurred elicited the response that the information was too difficult to collate or research.¹⁴

Lack of Exiting Support and Prevention

No funding has been allocated to exiting provision compared to the substantial annual funding (1.1 million) received by the NZPC who do not support an exiting approach.¹⁵ This is in spite of the fact that when being debated, the law was promoted as a way to support both preventing entry and facilitating exit.¹⁶ The PLRC stated that 85% of respondents wished to exit prostitution.¹⁷ This is likely to be an underestimation because many women only contemplate exit when given the hope that it is really possible, often through appropriate service provision.¹⁸ Similarly, an OIA revealed that there is little support for NGOs to carry out prevention work.¹⁹

2) Introduction

The intention behind the 2003 PRA was to improve the circumstances of women involved in prostitution. The law passed only with a slight majority and many of the people who voted in

¹² OIA dated 17th January 2018 to the Ministry for Vulnerable Children.

¹³ PLRC (n 7) pp8,9.

¹⁴ OIA Dec 2017 to Minister of Business Innovation and Employment.

¹⁵ OIA dated 24 Jan 2018 to the Ministry of Social Development.

¹⁶ Hansard, 'Prostitution Reform Bill - Second Reading. 19 Feb' (2003)

<https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030219_00001132/prostitution-reform-bill-second-reading>.

¹⁷ PLRC (n 20) table 13.

¹⁸ Roger Matthews and others, *Exiting Prostitution : A Study in Female Desistance* (Springer 2014).

¹⁹ OIA dated 24th Jan 2018 to the Ministry of Social Development.

its favour sincerely believed it would deliver on promises made by those advocating for the law change.²⁰ Because of this, an obligation to review the impact of the law was built into the legislation. In 2008, the law was reviewed and recommendations made. The review was viewed as being largely positive and this was reflected in international and academic opinion.

However, this reputation does not match the reality of what the evidence suggests. The tone and conclusions of the report did not match up to the rather more complicated picture represented in the data, for example an admission that there is a black market that they have no data on, that there seems to be no increase in the likelihood of reporting violence, and that women are still coerced into taking clients when they don't want to.²¹ The gap between the substance and the conclusions of the report is pointed out by the UK Home Office:²²

“The [*Prostitution Law Review Committee (PLRC)*] concludes that they are ‘confident the vast majority of people involved in the sex industry are better off under the PRA than they were previously’ (PLRC, 2008:168). This message has been widely publicised, but without the substantial caveats that more detailed reading of the report and evaluation studies reveals.”

The Prostitution Law Review Committee was set up as part of the PRA law to be a review body, with a statutory requirement to review the law after five years. The 2008 PLRC report made recommendations to the government but there has been no review since. A main part of our evaluation of the 2003 law is to ask what happened to the recommendations made to government twelve years ago. It has become clear that these recommendations have been ignored. One of its recommendations was to conduct a further review of the PRA in 2018, however, two OIA's confirmed that this would not happen. A review of the 2008 recommendations and failures to implement is contained in Table 1 of this report.

In this context, it is hard to justify any claims made with regards to the ‘success’ of the law because the situation is that the impact of the law has simply not been monitored. A hands-off approach to the sex industry has meant that there is no robust research or monitoring of

²⁰ Hansard (n 16); Hansard, ‘Prostitution Reform Bill — Procedure, Third Reading. 25 June’ (2003) <https://www.parliament.nz/en/pb/hansard-debates/rhr/document/47HansD_20030625_00001319/prostitution-reform-bill-procedure-third-reading>.

²¹ PLRC (n 5).

²² Liz Kelly, Maddy Coy and Rebecca Davenport, ‘Shifting Sands: A Comparison of Prostitution Regimes across Nine Countries’ (2009).

the industry, including any associated exploitation and abuse. In effect, the absence of any evidence gathering has been interpreted to mean that there is in fact no evidence of harm to gather. This simply does not follow.

3) Background

The debate relating to prostitution policy tends to centre on whether the demand side of prostitution should be decriminalised or legalised. In general, both sides of the debate agree on decriminalising sale. Decriminalisation as a policy approach has been developed because legalised regimes became ghettoised (unsurprisingly, the links to organised crime and exploitation cannot simply be 'legalised' away), as happened in Amsterdam. The difference mainly amounts to the levels of regulation of the industry, with decriminalisation being less 'official' and therefore more hands off.²³ Stand Against Sexual Exploitation, a charity that aims to improve services for women exiting, summarises the arguments in favour of legalisation/decriminalisation and the response to these arguments as follows:²⁴

"The key arguments made for these policy approaches are:

- We'll be able to see and control the abuse better because it won't be 'underground'
- It shouldn't be hard for people to engage in prostitution, it could turn punters violent
- We don't want to reduce the industry, women should be able to make an income
- We should normalise the industry so that people selling sex are not stigmatised

In short, the key responses to this are:

- Both policy regimes have demonstrated that as demand grows so does the black market, with associated exploitation and harms. Further, even in the 'visible' and 'legitimate' establishments, it is easy to hide exploitation and even ensure that women do not report abuse for fear of repercussions
- Making it harder for people to buy sex actually deters people from buying sex. This reduces the risk of harm by removing more potential perpetrators. In addition, the punters who are driven by violence are not put off either way and the violence still occurs in legalised/decriminalised regimes

²³ SASE, 'Two Failed Experiments: How Legalisation and Decriminalisation (of Both Sale and Purchase of Sex) Are Failed Policy Regimes' *Stand Against Sexual Exploitation* (2019) pp5-9.

²⁴ *ibid.*

- The best way of securing a viable financial future is to help people to NOT have to make the choice to sell sex, but to find alternatives. If the problem is that there is no alternative to prostitution then that needs to be addressed as opposed to simply leaving it as a viable option for people who are struggling financially. Involvement in prostitution should not be inevitable
- People selling sex should never be stigmatised. Many people, however, do not want to be prostitutes and even in regulated regimes do not register as one. Stigma is present no matter what the regime. It is not stigma that causes violence and other harms and keeps people without alternatives. The best way of reducing stigma is to help women to engage in society in meaningful ways through service provision, as well as to raise awareness of the strength and resilience of survivors”

Research suggests that the overwhelming majority of women in the industry are there out of economic necessity (90%).²⁵ There is strong demand for sexual services and women’s economic disadvantage and status as sexual objects results in the industry being overwhelmingly about male purchase of female bodies.²⁶ For the majority their involvement is about financial survival.²⁷ There is a continuum of factors that come into play and restrain people’s choices – ranging from more ‘obvious’ cases of force and control, to debt, to drug and alcohol problems, to poverty - and prostitution is entered into when choices have run out.²⁸ For instance, Switzerland has a policy position that as long as women are selling sex to feed a drug habit they cannot be said to be ‘freely’ choosing to prostitute themselves. This is because a ‘free’ choice means one that is not purely based on survival/necessity but on actually actively wanting to be in a particular situation. Only a minority of women can be said to have freely chosen prostitution without significant constraints that mean they have effectively run out of choices.²⁹ It is not appropriate, therefore, to base policy on an ‘idealised voluntary’ position.

²⁵ Gillian Abel, Lisa Fitzgerald and Cheryl Brunton, ‘Christchurch School of Medicine Report to the Prostitution Law Review Committee. November 2007’ *Christchurch School of Medicine, University of Otago* (2007).

²⁶ Megan Murphy, ‘Why Does the Left Want Prostitution to Be “a Job like Any Other”?’ 7 Nov’ *Feminist Current* (2011) <<https://www.feministcurrent.com/2011/11/07/why-does-the-left-want-prostitution-to-be-a-job-like-any-other/>>.

²⁷ *ibid.*

²⁸ Matthews and others (n 18).

²⁹ Roger Matthews, *Prostitution, Politics & Policy* (Routledge 2008).

The PRA 2003, which effectively removes all restraints regarding prostitution, is the result of NZPC campaigning with the support of key MPs. The NZPC came into existence in order to address health issues related to involvement in prostitution (HIV and AIDS) but quickly became a lobby group for the complete decriminalization and normalization of the industry. In addition to their promotion of decriminalization, their service interventions have mainly focused on 'harm reduction', such as providing condoms, offering advice about avoiding violence, and helping individuals and 'businesses' to set up in the sex industry. The NZ Government look to them as an authority on prostitution and rely on them for information about the industry, which they produce in six monthly reports.³⁰ The NZPC receives over one million dollars per annum in funding from the Ministry of Health but there is very little scrutiny of where this money goes. Although they claim to be a not for profit organisation, they are known to charge for various items such as condoms and lubricant until challenged on this because these items are already paid for within their Government funding. Their activities are limited and they are noticeably hands-off in relation to trafficking, child sexual exploitation, and exit.³¹

In terms of their lobbying activities, they have had almost total success in positioning prostitution as merely 'work' and completely legitimizing it through the PRA 2003 save for a few key issues:

1. It would be illegal to have unsafe sex
2. It would be illegal for immigrants on temporary visas to be involved in prostitution in NZ
3. The law would be reviewed after five years. The Prostitution Law Review Committee ('PLRC') were specified in the bill with the objective of assessing whether the bill was achieving its purpose.

The NZPC could nominate three members of the PLRC, which means that they have retained substantial influence and the review function of the PLRC is biased in favour of the NZPC agenda and perspective. The specific restrictions imparted on the PRA are critically important in order to understand the actions or inaction of the NZPC and the Ministries after the bill was passed into law. For instance, it is the reason the NZPC are, at this time,

³⁰ These reports can be found on the NZPC website.

³¹ Tan (n 2); Lisa Lewis, 'Open Letter Regarding NZPC. An Open Letter to Propose an Amendment to Prostitution Reform Act 2003. An Open Letter to Propose a Minister of NZ Prostitution' [2018] Open Letter published 9 June (email).

vigorously canvassing for overseas workers to be allowed to come to NZ to work on temporary visas.³²

Even with the above compromises, the law only passed by a majority of one vote (one MP abstained). There was not a consensus³³ and many people only voted for the bill because they sincerely believed that it would lead to fair treatment for the women in prostitution. Stephen Franks sums up many of the MPs concerns in the following quote from Hansard:³⁴

“There is nothing in this bill that changes the protection of the human rights of any prostitute. There is nothing that protects them from exploitation”

“... The other significant change will be the abolition of the law against pimping. When people tell me that this change in the law somehow enhances the power and the ability of the prostitute to stand up to the boss, I am genuinely disgusted. If there is one factor of international experience, it is that prostitution is associated with brutal men who exploit women, who live off their earnings, and who keep them in a form of slavery

... where the pimp is not afraid of any police action. Because that is what the change does. At the moment, the brothel-keeper and the pimp are well aware that they are breaking the law. They are breaking the law more readily than the prostitute, because the only liability that the prostitute faces is for hard-sell marketing.”

... The proponents of this bill decided that they not only would put no capacity in the police hands, but also would take away the existing powers that they have”

Dr Paul Hutchison MP pointed out that:

“nor is there much visible evidence that this bill is underpinned by resourcing that will break the cycles of disadvantage that get them there in the first place, or help them find viable alternatives or rehabilitation. I am also mindful of the

³² Catherine Healy, AHI Wi-Hongi and Chanel Hati, ‘It’s Work, It’s Working: The Integration of Sex Workers and Sex Work in Aotearoa/New Zealand’ (2017) 31 *Women’s Studies Journal*.

³³ NZP, ‘Prostitution Law Reform in New Zealand. July’ *New Zealand Parliament* (2012).

³⁴ Hansard (n 20).

strong criticisms of this bill from the Police Association that recent changes to certify brothel operators are unworkable and naive.”

Instead of addressing these issues, there has been a hands-off approach to the industry and a push to normalize it and remove any and all restrictions, while at the same time failing to monitor or implement provisions to address exploitation and abuse. In 1997 The NZPC was given a contract by the Ministry of Health to promote Health and Safety. After the PRA their contract was changed to include clauses for them to promote the NZ decriminalization system under the guise of health and safety benefits. As such, the NZPC has been sanctioned to promote the decriminalization law while at the same time failing to address the very real concerns about the sex industry that were raised in Parliament.

4) Promised vs Actual Benefits and Failures to Reform

It is now apparent that the PRA 2003 was falsely presented to Parliament as being intended to improve the health and safety of women involved in prostitution. Instead, the NZ government has allowed a system of self-regulation, which has been rejected in other jurisdictions, such as the UK,³⁵ because it would allow for unfettered exploitation and harm.

Certain promises were made while debating the implementation of the law which have simply been ignored since:³⁶

1. “To examine how the Government and the community can best deter people from entering prostitution and make it easy for them to leave it, if they choose.” This has simply not been done, despite being the main driver for reform.
2. “Under-age sex is best controlled by stronger law against the client—law that can actually be enforced.” The police have not been enforcing the law and cannot question people on their age.
3. “Exiting from prostitution is best controlled by a combination of good social policy, such as the provision in the bill to minimise benefit stand-down periods to people leaving the sex industry and some great on-the-ground social work projects.” There is very little provision for exit.

³⁵ Kelly, Coy and Davenport (n 22).

³⁶ Hansard (n 16); Hansard (n 20).

4. “The bill gives local bodies the power to control that signage” and “local bodies will have more controls over brothels in the area”. Local bodies do not control location or spread of brothels.

5. “For sex workers, the world will change dramatically if this bill passes into law”

Saying:

- a. “Key to this will be a transformation of their relationship with the State” -the police,
- b. “...they will be under a public health umbrella.”
- c. “They will have the opportunity for an employment contract,” and
- d. “the certainty of an Occupational Safety and Health Service code, and a safer sex - focused environment to work in.”
- e. “...a stronger law against coercion.”
- f. “Workers aged under 18 will not be criminalised, but their clients will face longer sentences than under the current law, with less opportunity to successfully defend themselves.”

These changes have not happened in practice. In general, the law has simply resulted in impunity for clients and pimps with very few checks and balances and a black market that the NZPC have no contact with and that isn’t policed.

Table 1: Promised vs Actual Benefits of the PRA

Area of Control	Before PRA	Theoretical After PRA	Actual Practice After PRA	Comments
People in Prostitution decriminalise d.	Prostitution criminalised/tr eated punitively	Prostitution (sale) decriminalised	Prostitution (sale) is decriminalised	This aspect of the law has benefited those in prostitution
Violence	No Control	No Control	No Control	No change or worse now pimping has been made effectively legal. Police only respond if a complaint is made, however, women do not complain because they fear publicity or being penalised by clients/pimps. They may simply move to a different brothel.

Coercion	Police had authority over pimps	Coercion is illegal, punishable with up to 7 years imprisonment	Pimping is effectively legal and often involves coercion with impunity	Police have no jurisdiction. Pimps are in control and frequently coerce women to have unsafe sex and accept drunk clients. Women do not report due to fearing being penalised by clients/pimps.
Control of Pimps	Police had jurisdiction	No Control	No Control	Procurement and Pimps are outside the law (except for controlling those underage). However underage persons cannot be challenged about age.
Control of Massage Parlours /Brothels	Police could enter premises	Police could only enter if they had a warrant	Only Immigration officials have ready access to premises	Police totally constrained because they cannot enter brothels without a search warrant, except to check liquor licence.
Immigration control	Police could enter premises	Against the law for migrants to prostitute	As of 2018 no effective control	Police cannot enter brothels, immigration officers can, but brothels are often warned about a raid. A growing problem as 20% are estimated as illegal immigrants.
Employment Contract	None	Contracts in place that protect women	Ineffective	Few meaningful contracts, most workers subcontract, but they are still subject to abuse from Pimps
OSH code	None	Safe sex manual produced	Safe sex manual produced	Comprehensive manual produced. NZPC have also produced a more practical pamphlet.
Safer Sex	NZPC Education. But possession of condoms could result in prosecution	Clients must use condoms by law	Clients legally required to use a condom. May not happen in practice.	NZPC education for workers. But some workers are still coerced into unsafe sex, usually by the operators. Only one known client prosecution for refusal to cooperate.
Brothel Inspections	None as brothels were	Conditions in brothels were	Only a few inspections	By 2014 only 11 brothels had been inspected in the whole of NZ in the

by Ministry of Health Officials	illegal (although happened in practice)	to be monitored	were carried out immediately after the law was introduced	previous 10 years, and none were done in Auckland, Wellington or Christchurch.
Under 18 cannot be criminalised		No change		Underage girls are treated as victims, not as sex workers.
Under 18 client prosecution	Police had jurisdiction to intervene	Remains illegal and should be policed	Prosecutions rare, police cannot check age of girls	Police action is severely constrained because they cannot ask age and can only enter brothels to check liquor licence. Prosecutions are rare, sentences are minimal.
Public Health Available		No change		Health treatment has always been available as a NZ citizen.
Street Work	Illegal to solicit	Reduction in numbers promised. No restriction on soliciting or prostitution	Numbers have greatly increased, Nuisance to residents. Underage have few protections.	Generally agreed that PRA has failed. Previously fear of prosecution provided peer pressure to control nuisance. Police cannot question age of workers. Legalisation promotes 'opportunistic' prostitution.
Local Bodies Control of Brothel Location	No control	Local bodies to control	Hands off approach	Control of location has been limited

Source: Hansard 2003 (second and third reading), PLRC 2008, Abel 2007, NZPC reports, OIAs, and other evidence set out in this report

In 2008, several recommendations were made for reform in order to address some of the failures of the law.³⁷ These are detailed in Appendix 1. In summary, there has been a failure to:

³⁷ PLRC (n 5).

1. Monitor numbers of women in prostitution alongside a database and details of their health, safety, and access to human rights.
2. Provide funding to the Ministry of Health to enable Medical Officers of Health to carry out regular inspections of brothels
3. Make available adequate funding for the establishment/continuation of NGOs that can provide a range of services to the sex industry, including assistance with exiting for those who wish to exit
4. Develop a stronger certification system that includes agreeing to brothel inspections before a certificate is issued
5. Increase funding to support those who are underage and focussing on prevention
6. Take measures to improve best practice in relation to employment conditions, particularly in relation to the right to say 'no'

5) Normalisation

Once the PRA bill (which was essentially written by the NZPC with assistance from the Ministry of Justice) was passed, the NZPC focused their attention on normalizing prostitution. Their stance has been to get prostitution accepted by society as a valid profession which must thereafter be treated as such. Clauses in the bill immediately enabled this to happen, such as legalizing pimps. Pimps were transformed from criminals into respectable “entrepreneurs”, operators and managers, and an asset to the tourist industry. The NZPC uses a range of tactics to promote the normalisation of the industry, these include:

1. Providing ‘business’ support and an advice service for brothels. A significant section of their up market high quality corporate website is given over to the advice and services the NZPC provide to potential or existing brothel owners. This actively supports pimping.
2. Assuming and promoting the idea that most women want to remain in prostitution and that workers should not be ‘pressured’ to exit, which means in reality that there is very little serious attention given to helping women out.³⁸ Even underage girls are passed onto other authorities (there is no contract for them to provide exiting services). There is also no housing support related to exit, which is a common model

³⁸ Julie Bindel, *The Pimping of Prostitution* (Palgrave Macmillan UK 2017) p318
<<http://link.springer.com/10.1057/978-1-137-55890-9>> accessed 20 December 2018.

in other jurisdictions.³⁹ They use sanitizing language such as the term “Breaks from work” instead of “Attempts to exit”⁴⁰ and generally deny abuse and exploitation. They also refuse to talk to women about exit, stating that it is offensive,⁴¹ when in fact it has been shown that conversations about exit are essential for helping women to believe in the possibility of change and have hope.⁴²

The PLRC research suggests that only 15% expect to stay in the sex industry for over 5 years and only 23% stated that “*They do not want to do anything else*”.⁴³ This does not mean that they actively ‘want’ to stay. The same table gives numerous reasons why the rest *need to stay*. The NZPC ignore any information that says women want to exit. This contradicts even the lowest estimates from countries that have also decriminalized, where at least 40% wish to exit, but likely far more.⁴⁴ Women who want to leave have little to no support.

3. Rejecting the views and experiences of women who have exited prostitution and anyone who speaks out against the normalization and decriminalization of prostitution, as well as bullying and vilifying them.⁴⁵ This includes suggesting that feminists are the ones who make women into victims, not the pimps, buyers or other perpetrators, as well as attempting to silence survivors by preventing them speaking at events.
4. Denying that sex trafficking is a problem, in spite of the USA government reports stating otherwise,⁴⁶ and supporting migrant involvement in the sex industry. The NZPC are vigorously campaigning to overturn the exclusion clause in the PRA that states that overseas immigrants on temporary visas cannot engage in prostitution. They suggest that coming to NZ would be “a wonderful holiday for immigrants”.⁴⁷ In

³⁹ TORL, ‘Turn Off The Red Light’ [2020] WHP Ireland <<https://www.turnofftheredlight.ie/>>; Matthews and others (n 18).

⁴⁰ PLRC (n 5); Abel, Fitzgerald and Brunton (n 25).

⁴¹ Elaine Mossman and Pat Mayhew, ‘Key Informant Interviews Review of the Prostitution Reform Act 2003’ (2008).

⁴² Matthews and others (n 18).

⁴³ PLRC, ‘Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003’ (2008) Tables 13 and 15.

⁴⁴ *ibid*; Janice G Raymond, ‘Gatekeeping Decriminalization of Prostitution: The Ubiquitous Influence of the New Zealand Prostitutes’ Collective’ (2018) 3 Dignity 6.

⁴⁵ Julie Bindel, *The Pimping of Prostitution* (Palgrave Macmillan UK 2017) p67 <<http://link.springer.com/10.1057/978-1-137-55890-9>> accessed 20 December 2018.

⁴⁶ USDS, ‘Trafficking in Persons Report: New Zealand’ (2004-2020) United States Department of State.

⁴⁷ Anna Reed, ‘Foreign Prostitutes Heading to NZ Illegally’ (2016) <https://www.rnz.co.nz/audio/player?audio_id=201821623>.

reality, removing this clause would provide an endless source of women to feed the brothels, particularly as there is a demand for a variety of international women, as well as boosting the online industry. This ultimately results in increased competition and deteriorated working conditions for all women in the industry.⁴⁸

5. Arguing that women – including trafficked women - will be safer because they will be able to take their complaints to the police. Yet the NZPC's own survey reports that less than 20% of NZ workers themselves actually report violence and abuse to police.⁴⁹
6. Misrepresenting the impact of the law, regularly speaking at large influential international conferences expounding the success of the NZ decriminalization system using misleading information, such as implying that health and safety inspections are occurring when they are not, and excluding the fact that there is no support for exit, as well as the fact that there is no evidence that the PRA has reduced coercion, violence and abuse.⁵⁰
7. Failing to collect data as required by their contract⁵¹ to provide evidence-based research, such as the number of workers, details of brothel operators who coerce girls to have unsafe sex etc. One example is hiding the reality of the threat of HIV. The NZPC have claimed that (within the women *they* see at their clinics) women involved in prostitution have some of the lowest figures for HIV. However, recent figures for infections in 2016 were the highest ever.⁵² Further, it is legal for someone to know they have HIV to carry on their trade, a fact that is not shared in the public domain.
8. Promoting the idea that prostitution will be sent 'underground' if it is not normalised. There simply is no justification for this claim. Apart from some limitations on their location, SOOBs are free of constraints and controls. Theoretically they are free of 'managers' and can only be entered with a warrant so inspections are not required. In

⁴⁸ Lincoln Tan, 'NZ Sex Workers Lodge Complaints over Website Advertisements. 22 Apr' *NewstalkZB* (2018).

⁴⁹ Abel, Fitzgerald and Brunton (n 25).

⁵⁰ Detailed in NZPC reports, such as the following referred to in the Jul-Dec 2014 report: Catherine Healey, 'It's Not What We Do But How We Do It: Occupational Health and Safety Standards for Sex Workers' [2014] International Aids Conference, Melbourne.

⁵¹ NZPC Report 8th Jul-Dec 09 p78

⁵² Anna Loren, 'NZ Records Highest-Ever Number of HIV Diagnoses in 2016. 31 May' (2017) <<https://www.stuff.co.nz/national/health/93148062/nz-records-highest-ever-number-of-hiv-diagnoses-in-2016>>.

practice they are the nearest thing to legalized prostitution possible. Hence, they are essentially unregulated and form a two-tier system of prostitution in NZ.

While the NZPC deny gangs are involved in prostitution, media reports show gangs sexually exploit women and coerce them into prostitution and they do it without any constraints.⁵³ The police are aware that the gangs keep girls in their headquarters and other gang houses. In stark contrast to other countries, the NZPC do not accept that NZ gangs are involved in prostitution. This is probably because the NZPC are unable to get access to them (gang houses are like fortresses with high metal fences, dogs and armed members) and it deflates the NZPC argument that they know everything that goes on in prostitution.

In a report on migration to New Zealand, it was admitted that “most vulnerable migrant sex workers were not accessible in person”, demonstrating that there is still ‘underground’ prostitution in New Zealand.⁵⁴

9. Speaking for women when in fact they have not been consulted. In the Ministry of Justice Report, the heading ‘key-informant-interviews’ states:⁵⁵

“In relation to exiting, we asked informants what means of helping sex workers to exit were available in their region and what they felt was needed. The questions proved to be ones in which many informants had limited interest, or were not keen to talk about. Many within the industry did not feel it was a problem for sex workers to exit when they wanted to. For the majority of brothel operators, the issue was not how to assist sex workers to exit but how to keep them working.”

The ‘key informants’ here were actually the operators, in other words. the pimps who have a vested interest in them remaining in the industry. The NZPC consistently amplifies the voice of pimps. Pimps take around 50% of the womens’ earnings and anyone exiting loses them income.

⁵³ Harrison Christian, ‘Gang Sex-Trade Tax Probe. 21st July’ *Hawkes Bay Today* (2015) <<https://www.nzherald.co.nz/hawkes-bay-today/news/gang-sex-trade-tax-probe/U2LT5BRFTNY6I4XEZHNOHCYIKU/>>; Elizabeth Binning, ‘Teen Prostitutes Pimped out by Gang Members’ *NZ Herald* (2008) <<https://www.nzherald.co.nz/nz/teen-prostitutes-pimped-out-by-gang-members/X4MAP273SMK54I2K2EGMA36K3U/>>.

⁵⁴ Gillian Abel and Michael Roguski, ‘Migrant Sex Workers in New Zealand, a Report for MBIE’ *Otago University* (2018) p9,10.

⁵⁵ PLRC (n 18) sections 2&7 with contradicting comments.

This normalization and sanitation of the industry is also practiced by the media. Often this is because they quote the NZPC without interrogating the veracity of their statements.

6) Tracking the numbers of women involved in prostitution in NZ

The Committee clearly state the reasons why monitoring the numbers in prostitution is of the utmost importance because evaluating the trends of those entering or exiting the industry benefits any future assessment of whether the PRA is achieving its purpose.⁵⁶ The PLRC 2008 states that there are 2,332 women involved in prostitution and this figure has been used ever since as the gauge for how many are involved.⁵⁷

However, this often quoted figure omits many factors, namely:

1. The fact that women enter and exit the industry⁵⁸ so for figures to remain constant, there must be many more women engaging in prostitution over a period of time (most women leave after around 3-5 years according to the NZPC)⁵⁹
2. Women who are not in contact with the NZPC and who are illegal,⁶⁰ work online,⁶¹ or are in the black market⁶²
3. The NZPC's own figures about how many women they have engaged with, which was stated in 2019 to be 7,416⁶³.

Making adjustments based on the NZPC engagement figures and the estimates of women exiting (85% within an average of 4 years), this would mean that 1,575 move out of the industry in a year, whereby if the figures remain stable then the same amount also enter the industry during this time. As such, over the course of a year, 9,000 will have been involved in

⁵⁶ *ibid*; NZP (n 33).

⁵⁷ PLRC (n 6) pp29.

⁵⁸ The 'Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003' (2008) states in Table 18 that only 15% want to remain in prostitution.

⁵⁹ NZPC reports

⁶⁰ Mitch McCann, 'Revealed Hundreds of Suspected Sex Workers Stopped at NZ Border, June' *Newshub NZ* (2019) <<https://www.newshub.co.nz/home/new-zealand/2019/06/revealed-hundreds-of-suspected-sex-workers-stopped-at-nz-border.html>>.

⁶¹ Teela Sanders and others, *Internet Sex Work: Beyond the Gaze* (Springer 2017).

⁶² Gill Bonnett, 'NZ Sex Workers Undercut by Illegal Foreign Prostitutes. 31 May' *RNZ* (2018) <<https://www.rnz.co.nz/news/national/358658/nz-sex-workers-undercut-by-illegal-foreign-prostitutes>>.

⁶³ NZPC Jan-June 2019 KPI p17

prostitution. This is an underestimation because it does not include the black market, online, illegal, and other workers not in contact with the NZPC.

It must be noted that at best, as stated in the PLRC 2008, the impact of the law has been to keep numbers stable.⁶⁴ As little is known about trafficking, underage, and those controlled by gangs and in the black market, it is possible that there has been an increase in these aspects of the industry as demand grows and is normalised.

7) Failures to Report, Monitor, and Remedy

The NZPC and the Ministry of Health and other government departments promised to work together to ensure that the PRA 2003 had a positive impact. The NZPC has a contract with the Ministry of Health to undertake a number of tasks and the government then has specific duties to monitor the impact of the law and the state of the industry.

In 2009 in order to clarify the Sexual and Reproductive health contract between the Ministry of Health and the NZPC, the NZPC compiled and agreed an additional contract specification. Its purpose is to clearly set out specific requirements and included an extensive range of activities and several levels of required outcomes. The specification was designated the "Programme Logic Model" and was developed by the NZPC.⁶⁵ The list below shows of some of the critical data that the NZPC specified and agreed to report on in the 'Programme Logic for NZPC' specification. This represents the evidence-based data required by the 'Programme Logic for the NZPC' agreement with the Ministry of Health contract. None has ever been produced.

- Document the trends in complaints from sex workers received by the NZPC
- Number of requests to NZPC for assistance with specific issues or concerns
- Number of referrals of sex workers to other agencies
- Summary of complaints received by other agencies (e.g. Medical Officers of Health, Police, local councils, etc.) conveyed to NZPC.
- Percentage/number of sex workers who believe there will be no negative repercussions from others (e.g. government agencies, brothel owners,) as a result of them exercising their rights

⁶⁴ PLRC, 'Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003' (2008) p13.

⁶⁵ NZPC Report 8th Jul-Dec 09 p78.

- Percentage/number of sex workers who have raised concerns with their employer
- Percentage/number of sex workers who feel supported to refuse a client
- Information received from OSH, Medical Officers of Health and public health services, territorial authorities or other regulatory authorities that provide information about complaints received
- Percentage / number of sex workers who report fewer violent or adverse incidents [the use here of “fewer” demonstrates the bias, it should be trend of all incidents]
- Percentage/ number of sex workers who have refused a client
- Percentage/number of sex workers reporting having to pay bonds or fines
- Percentage of PRA convictions
- Number of investigations – (obtained from the police or Ministry of Justice p84)
- Number of prosecutions – (obtained from the police or Ministry of Justice p84)
- Decrease in the numbers of sex workers who report being coerced
- Percentage/number of sex workers self-reporting improvements in all areas of their lives
-

Aside from the fact that the list presupposes that women will continue to be exploited or abused in prostitution (for example, by only ‘reducing’ numbers who are coerced), this list is lacking important data:

1. No mention is made regarding data on exiting, which was a main objective of the bill. The Ministry of Health / Justice should have insisted that this data be included as they contracted the NZPC as their source of data on prostitution and exiting was a main consideration of the PRA 2003. This should include numbers who have successfully exited.
2. There is no information on children exploited in prostitution. In view of the seriousness of this as a criminal offence, it is a major omission from the specification of requirements.
3. Details of the brothel inspections the NZPC carry out themselves.
4. Summary of health and safety hazard reports in the brothels inspected, and the progress brothels make to prevent re-occurrences.
5. Name of brothels who do not allow the NZPC to make an inspection.

6. Percentage /number of women involved in prostitution with addictions and type of addiction.

The prime purpose of the 'Programme Logic for NZPC'⁶⁶ is that it should highlight and establish critical trends in prostitution. They are designed to set the framework for future health and safety and other changes of the PRA law. As an example, a clause specified in the table "Legislative Compliance: collaborating with central and local government agencies and wider stakeholders to ensure the legal rights of sex workers as defined in law are upheld" states its purpose is to ensure "sex workers work within the protection of the law."⁶⁷ The data to be reported is the "decrease in the numbers of sex workers who report being coerced".

However, no meaningful data has ever been provided by the NZPC with, or after, the Logic Programme report. Their reports use comparisons such as "some", "large number", "increased number" without any quantification. They often quote a percentage and omit the datum number that the percentage given refers to, which renders their figures meaningless. Overall, the NZPC has failed to collect any meaningful data and despite having the responsibility to monitor the performance of their contracts, the Ministries have never taken any action to correct this, as an OIA in 2018 proved.⁶⁸

It is significant that following a Petition⁶⁹ and subsequent select committee submission to Parliament on prostitution in November 2013, the content and coverage of NZPC 6 monthly reports to the Ministry of Health changed significantly.⁷⁰ Such were the changes that the revised reports did not contain any factual or specific information or comments on violence or coercion by operators etc. Instead they referred to training and conducting 'education on reducing and resolving issues of violence and coercion'. An exception was that in the July-Dec 2015 report they made a vague reference to actual breaches. In the revised report format the information supplied to support the contract payment of some \$1.1m p.a. was reduced to 4-line items (salary related costs, direct costs, indirect costs, and workforce development) with no breakdown of how these costs were incurred. The Ministry of Health

⁶⁶ ibid Programme Logic p78.

⁶⁷ Ibid Programme Logic p85.

⁶⁸ OIA dated 14th May 2018 to the Ministry of Health, Sector Operations.

⁶⁹ Petition 2011/60 of Elizabeth Subritzky on behalf of Freedom from Sexual Exploitation, submission to The Justice and Electoral Committee 2013.

⁷⁰ NZPC Report Jan-June 14.

department “Sector” is responsible for monitoring contracts but in an answer to an OIA they admitted that they do not monitor this contract.⁷¹

Due to the long-term relationship between the Government and the NZPC, it is apparent that the NZPC ideology for the sex industry has become ingrained in Ministry of Health thinking. This has resulted in the lack of accountability by: a) not acting on the contents of the NZPC reports, and b) accepting the reports which did not conform to their contract.⁷² It was discovered that two reports submitted for 2013 were completely identical in all respects except the final budget page.⁷³ The whole report was simply duplicated and had been accepted by the Ministry. The failure to monitor and the willingness to allow a lobby group to take responsibility for reporting on the PRA should give cause for concern.

An indication that many women involved in prostitution are not happy with the NZPC being the self-appointed spokesman for the industry – and ignoring both prevention and exit - was that in June 2018, a group of 26 workers came together and wrote an open letter to the government rejecting the NZPC and asking for a Minister of Prostitution to represent the industry.⁷⁴

8) Limited Health and Safety

Violence

The NZPC were paid to collect research data for the CSOM 2007 report which show that some 10% of the 776 workers surveyed had been physically assaulted in the past 12 months and 3% raped.⁷⁵ The violence endured within the industry is out of the realm of accepted WorkSafe NZ definitions. In 2013 several women involved in prostitution went before a NZ select committee and testified to the abuse they had suffered while involved in prostitution. The committee members were profoundly moved by what they heard.

⁷¹ Ministry of Health, OIA response dated June 2018.

⁷² NZPC Report 8th Jul-Dec 09 Programme Logic p78.

⁷³ The OIA accompanying the supply of the hard copy reports to December 2013 included a table to clarify that Document (Report) 1 was actually for the period of July-Dec 2013, but the date on its face page stated it 1 January -30 June 2013. It had been incorrectly titled. Document 3 (report 3) had on its face page 1 Jan-30 June 2013.

⁷⁴ Tan (n 2).

⁷⁵ PLRC (n 20) Table 11: Adverse Experiences while Working in the Last 12 Months by Sector.

The NZPC state that it is impossible to wipe out the violence in the industry.⁷⁶ Therefore, despite support for the PRA often being related to reducing harm for those selling sex, it has already been acknowledged that this is impossible while remaining in the industry. Indeed, exit is the only form of harm eradication.

To a good deal of media fanfare in 2018, Catherine Healey released a new booklet on violence: *“What to do after violence”* which gives advice for sex workers who have been violently abused.⁷⁷ No other industry has required similar publications. These strategies acknowledge that they presuppose that women will suffer violence, they fail to eliminate the very real experiences of pain that this causes.

The Health and Safety Manual for women in prostitution attempts to normalise violence and coercion in prostitution by including comments that brothels should develop procedures that “identify potentially dangerous situations and how to protect themselves”.⁷⁸ In Victoria (Australia) it’s possible to get government funding for ‘brothel management programs on self-defence’.⁷⁹ The program is like crisis management training for a hostage, which can sometimes literally be the case as the PLRC report acknowledges that women can be held somewhere against their will, it sheds light on the vulnerability which is inherent in the prostitution transaction.⁸⁰

Coercion into Sex Acts

It is an offence to compel a prostitute to “perform acts against her will”, including unsafe sex, and this offence is punishable by up to 14 years imprisonment.⁸¹ Despite concluding that the PRA had a positive effect on the safety and rights of workers, a closer look at the PLRC 2008 demonstrates that over a third (35.3%) had reported that they had been required to provide services against their will.⁸²

⁷⁶ Reed (n 47).

⁷⁷ NZPC, ‘What to Do: A Guide for Sex Workers Who Have Experienced Sexual Assault’ [2020] New Zealand Prostitutes Collective <<https://www.nzpc.org.nz/pdfs/WHAT-TO-DO-A-guide-for-sex-workers-who-have-experienced-sexual-assault.pdf>>.

⁷⁸ NZPC, *A Guide to Occupational Health and Safety in the New Zealand Sex Industry* (2008) p52 <https://www.nzpc.org.nz/pdfs/WHAT-TO-DO-A-guide-for-sex-workers-who-have-experienced-sexual-assault.pdf>.

⁷⁹ Mary Sullivan, ‘What Happens When Prostitution Becomes Work’ CATWA (2005).

⁸⁰ PLRC (n 20) table 11.

⁸¹ Prostitution Reform Act 2003 Section 16 and Subsection 3.

⁸² PLRC (n 15) p46.

The law regarding 14 years imprisonment has only ever been taken to court twice since 2009. An OIA dated Nov 1st 2018 requested details of enforcement of safer sex and health and safety practices. The response demonstrated that there are very few official reports made of unsafe sex or being compelled to provide services. The flagship promise of the PRA has never been implemented.

The PRA contains the right to refuse a client. The 2008 recommendations suggested that brothel operators should be advised of this upon application for a license. This recommendation has never been implemented. Of particular concern is that the NZPC have frequently reported that it is the operators themselves who often coerce the women to accept clients they do not want.⁸³ The Department of Labour produce posters, however, the NZPC report they are not always displayed in brothels.⁸⁴

Although the NZPC vehemently encourages the right to say “no”, this is mitigated against the fact that brothel owners are known to encourage unsafe sex and other practices that women may not be comfortable with.⁸⁵ The right to say no may be in place but the pressure to agree to sexual practices is very real.

It is difficult to imagine that pimps would begin to treat women better when the law has legitimized their activities and they are only subject to scrutiny if a woman complains.

Safe Sex

In spite of the PRA originally being introduced specifically to control HIV, it is not illegal for women involved in prostitution to continue to work if they are infected with HIV. Some brothels display Ministry of Health posters stating it is illegal to have unprotected sex. In a survey the NZPC conducted in 2010. they stated: ⁸⁶

“Many operators display these signs and appear to support safe sex, in fact do not really care about safer sex practices and preferring to take the money will encourage their workers to perform unsafe sex. Sex workers move to different operators for a better environment, hours, conditions, clients or money.”

⁸³ NZPC reports.

⁸⁴ Ibid.

⁸⁵ PLRC (n 5) p46 and NZPC reports.

⁸⁶ NZPC report July-Dec 2010 p32.

The NZPC reports frequently state that operators coerce women to have unsafe sex (prior to their reports being downgraded in 2014). The NZPC were aware of which brothels and operators coerced the women. However, the Ministry never followed these reports up to ensure the offending operators were prosecuted.

Other Health and Safety Concerns

As well as coercion into sex and/or not using a condom, there are other violations of workers rights occurring. In spite of any contracts that may have been agreed, some operators also impose fines and restrictions to enforce their control. For example, demanding unreasonable attendance hours. The NZPC comment that “workers” move away⁸⁷ from brothels to SOOBs⁸⁸ or another brothel rather than report their treatment and abuse to the authorities.

Health checkups are not a legal requirement under the PRA, but the NZPC have put them as a high priority in all of their work. Those who are new to prostitution are encouraged to present at the NZPC Wellington clinic every 3 months for the first 2 years. The majority work for 2 to 4 years. Clinic staff report most need regular checkups.⁸⁹ In one NZPC report the list of issues presented at the Wellington Community Base were:⁹⁰

“condom breakage; unwanted pregnancies; fears regarding sexual health; interpersonal violence; dealing with clients under the influence of drugs and/or alcohol; abusive clients; poor management practices that compromise sexual health and safety; safer sex supplies; health promotion signs to display in brothels; and information and advice to new workers.”

Additionally, addiction causes ill effects on health. The NZPC report that most operators have a façade of being strict on drug and alcohol use. Only a handful do not tolerate its use. Most turn a blind eye and some even promote their use.⁹¹

⁸⁷ NZPC “Sex Worker Evaluation report”. The NZPC did a questionnaire survey with sealed responses to gain self-evaluation of their services. See also the NZPC Report Jan-June 2008 p19.

⁸⁸ SOOBs are legal premises of prostitution where up to 4 women can work providing they do so independent of any managers. No right of entry is permitted without a warrant so no inspections or police checks can be made. The NZPC say they have many come to their drop-in centres and also know the location of the SOOBs.

⁸⁹ NZPC report July-Dec 2009 p26.

⁹⁰ NZPC report Jan-June 2010 p34.

⁹¹ NZPC report July-Dec 2010 p 32.

Relatedly, mental health is a major concern. The NZPC reported in their survey⁹² that some operators allow people with noticeable mental health issues to work. Repeated coercion and violence can result in Post-Traumatic Stress Disorder (PTSD), and as the NZPC reports have said, in severe depression and in extreme cases suicide.

The CSOM report in 2007 (which was the research produced at the request of the PLRC) stated on page 1 that “18% of participants had experienced a work-related injury”. There were reputed to be 2332 workers, which would mean 419 injuries. On 9th January 2018 in reply to an OIA request the ACC provided information showing that new and accepted work-related claims were less than 10 persons per year (the classification for sex industry work is CU9530 and this covers brothel-keeping, massage parlour, and prostitution services). It should be noted that it includes all types of employment e.g. receptionists, and operators in addition to those engaged in physical sex acts.

9) Inspections and Other Regulatory Obligations

A principle feature which enabled the PRA Law to be passed was that brothel inspections by the Ministry of Health Inspectors would be part of the legislation. Inspections as defined in the PRA law are a statutory requirement. Recommendation 6 of the PLRC review suggests that the government provide additional funding to the Ministry of Health to enable Medical Officers of Health to carry out regular inspections of brothels. However, no inspections have ever been carried out in the main centres of prostitution, Auckland, Wellington or Christchurch since the PRA 2003 was passed, at least until 2015.⁹³

In the 6 months following the introduction of the PRA a few inspections were carried out by Health Officers. However, as the PLRC report states, the Officers reported that training and additional funding was needed to enable them to adequately carry out future inspections. Some public health service managers and Medical Officers of Health sought clarification from the Ministry of Health regarding the new functions under the PRA, they state that they were “told by the Ministry not to be proactive”.⁹⁴

Inspections have only been conducted as a result of complaints. 12 inspections were made

⁹² NZPC report July-Dec 2010 p 34.

⁹³ DHB replies to OIA dated Jan 2015. Also see NZPC report Jul- Dec 2015 p5, NZPC

⁹⁴ PLRC (n 5) p53.

immediately after the PRA⁹⁵ Subsequently in 2014 an OIA requesting the number of inspections was raised. It was passed backwards and forwards between several ministries and eventually had to be pursued by the ombudsmen. Months later it was shown that only 9 brothel inspections have ever been made in the whole of New Zealand in the previous 10 years. In 2018 a further OIA to the Ministry of Health requested information on funding and the number of inspections.⁹⁶ They responded that “no funding has been provided by the Ministry of Health specifically to enable Medical Officers of Health to carry out regular inspections of brothels”.

Both the Ministry of Health and the NZPC were aware that inspections were not being carried out by the Medical Officers and that this is in breach of the law. Over the years it should be noted that the NZPC reports did on occasions request that the Ministry should make inspections. In their Jan-June 2015 report,⁹⁷ the NZPC stated they had begun to train a few Medical Officers of Health in Wellington. This was so the Health Inspectors could conduct a local trial of brothel inspections. Their report stated that if the pilot trial was successful the scheme might be rolled out across the country. Nothing has ever been reported in subsequent reports.

Further, the current certification system has almost no worth. The only limitation for anyone obtaining a certificate is that no one with a criminal record is eligible (in addition to being a NZ or Australian citizen), but even this is easily circumvented. Brothel owners have made comments on the lack of use for the certificates, stating that they are never checked and it is easy to obtain.⁹⁸ Further, a list of certificate holders is meaningless to facilitate inspections since the address of brothels are not included on the certificates.⁹⁹ Not a single authority has any access to a register of addresses of brothels or SOOB's. The PLRC circumvented this by looking at adverts for sexual services¹⁰⁰ but there is no evidence of proactive steps being taken at any other time. In addition, the recommendation in the PLRC that brothel owners must agree to facilitate inspections to obtain a certificate has never been implemented.¹⁰¹

⁹⁵ Janice G Raymond, 'Gatekeeping Decriminalization of Prostitution: The Ubiquitous Influence of the New Zealand Prostitutes' Collective' (2018) 3 Dignity.

⁹⁶ OIA April 2018.

⁹⁷ NZPC Report Jan-June 2015 p5.

⁹⁸ Bindel (n 38).

⁹⁹ Janice G. Raymond, 'Gatekeeping Decriminalization of Prostitution: The Ubiquitous Influence of the New Zealand Prostitutes' Collective' *University of Massachusetts Amherst April*.

¹⁰⁰ PLRC (n 5).

¹⁰¹ *ibid*.

10) Reporting, Policing, and Prosecutions

The NZPC heralded the decriminalization of the workers to be a major improvement because they said the women could report all coercion or violence to the police without fear of being prosecuted themselves. However, now the activities of pimps are legal they are not subject to any constraints from the police unless a complaint is made to them. In practice only the most severe offences are reported which usually even excludes “normal” rape. The PLRC 2008 readily admits that it seems women remain unlikely to report incidents that happen to them.¹⁰² Further, many police lack the necessary training to empathize and understand their reality. Fortunately, this is not always the case and, in particular the police in Christchurch have often been commended for their sympathetic treatment of those in the industry.¹⁰³

In the CSOM¹⁰⁴ table 6.4 lists ‘Adverse experiences whilst working in the last 12 months by sector’, which showed that of 760 plus workers that (with the exception of rape) suffered actual physical assaults, threatened assaults, or even being held against their will (*kidnapping*) less than 20% of these incidents were reported to police. There were two main reasons for non-reporting, one was previous poor experience with police, but the most important reason was because their name would appear in the media. The NZPC reports frequently state that while abuse is not normally reported to the police it is reported to persons they trust, e.g. a co-worker and more often the NZPC. Rather than report the abuse, they just move to another brothel or to an SOOB.¹⁰⁵

There has been one prosecution under the NZ law.¹⁰⁶ While this isolated example shows the law can be effective, it cannot be lauded as a success when there has been almost no serious implementation of the law. The claimant herself stated in court that in most cases the women just go out the back and endure the sexual coercion forced on them by the their “manager” pimps. But, as the NZPC 6 monthly reports confirm, most women eventually leave the brothel after enduring the demands forced on them. While the NZPC have frequently commented in their 6 monthly reports to the Ministry of Health about the coercion

¹⁰² PLRC (n 5).

¹⁰³ PLRC (n 20) p58.

¹⁰⁴ Abel, Fitzgerald and Brunton (n 12) p120.

¹⁰⁵ Insight, ‘Insight: The Oldest Profession - A Normal Job? 30 October’ (2016)

<<https://www.rnz.co.nz/national/programmes/insight/audio/201821639/insight-the-oldest-profession-a-normal-job>>; PLRC (n 5).

¹⁰⁶ NZH, ‘Escort Wins Landmark Case, 28 Feb’ *New Zealand Herald* (2020).

by the legalised “operators” (pimps), they do not report any details. Neither have the Ministries followed up on these reports.

As street-based prostitution does not come under the realm of legitimate brothels and independent businesses within the legislation, there are a number of specific provisions and recommendations that recognise the vulnerability of this group. Georgina Beyer who was a Member of Parliament who passionately championed the PRA 2003 because she had personal experience of prostitution, has since claimed New Zealand lawmakers were ‘naïve’ in liberalising prostitution. In particular that the expectation that street prostitution would no longer be desirable proved to be completely false.¹⁰⁷ The prevalence of street prostitution has resulted in the public calling for legislation to control street prostitution by local councils restricting the areas for street prostitution or making street prostitution itself illegal.¹⁰⁸ However, this could have rescinded one of the few benefits of the PRA – decriminalising sale - and the NZPC successfully challenged such bills.

11) The Black Market

Gangs and Organised Crime

The NZPC have stated that there is little problem with gang’s involvement with prostitution but there are many independent reports that contradict this. In particular, gangs have featured highly in NZ media reports for many years. In NZ gangs, they recruit women and girls (often underage) and are known to keep them in gang houses, so it is unlikely that the NZPC have any contact with them.¹⁰⁹ Examples include:

- In 2015 the police investigated extortion and assaults on women involved in prostitution in Hawkes bay after reports of gang members forcing them to pay ‘tax’.¹¹⁰ This is a practice which a Napier brothel owner said was “nothing new”.

¹⁰⁷ NZH, ‘Beyer: We Were Naive Liberalising Prostitution. 6 April’ *NZ Herald* (2013) <<https://www.nzherald.co.nz/nz/beyer-we-were-naive-liberalising-prostitution/NDA55OPF4WPBF6LP6RKVUCU5XQ/>>.

¹⁰⁸ Manukau City Council (Regulation of Prostitution in Specified Places) Bill 2010 and later the Auckland Council 2014. Footnotes: Ross Robertson MP and Mrs Lole Taylor MP

¹⁰⁹ Christian; Binning (n 53); Rob Kidd, ‘Gangs Force Sex Trade on Underage Girls, 12th Sept’ *Stuff* (2012) <<http://www.stuff.co.nz/auckland/local-news/7654574/Gangs-force-sex-trade-on-underage-girls>>..

¹¹⁰ Christian (n 53).

- Streetreach New Zealand has stated that underage girls are being pushed into prostitution but are too scared of gangs to tell the police. In a 2012 article this was supported by the police who state the same.¹¹¹
- In South Auckland the police identified and removed sixteen young people who were selling sex on the streets and were being pimped out by gang members.¹¹²
- Some girls were living in gang homes where they were controlled by pimps who exchanged sex for accommodation, food and drugs and it was stated that historic sexual abuse investigations have revealed that underage prostitution is occurring.¹¹³ One of those cases involved the abduction and rape of a 12-year-old girl being abused in prostitution, which was solved a few months ago when the offender gave a voluntary DNA sample.
- An academic paper looking from the Maori perspective, confirms the fear and power that the gangs exert to keep knowledge of their activities under wraps and control their activities.¹¹⁴ It states that participants in Wellington and Auckland expressed the need to increase police patrolling at the street-level in their working areas because of safety fears due to the presence of gangs and minders.

Child Sexual Exploitation

The reality of the sex industry is that young people are the most sought after by punters and there is a steady stream of children being abused in prostitution.¹¹⁵ Pimps and gangs use 'grooming' to draw young girls into prostitution. Pimps frequent places where homeless and marginalised girls and young women can be found. Between 20 and 50% of those who become homeless will be abused in prostitution.¹¹⁶ Grooming of young people is also made more possible through social media.¹¹⁷

¹¹¹ Kidd (n 109).

¹¹² Binning (n 53).

¹¹³ Christian (n 32) - confirmation of this by *Napier brothel owner Kathy Woods*.

¹¹⁴ Elise Escaravage, 'Voices of Māori Sex Workers. A Dissertation Submitted in Partial Fulfilment for the Degree: Master's in Human Rights Policy and Practice' *School of Global Studies, University of Gothenburg School of Business and Social Science* (2016).

¹¹⁵ Josh Gale, 'Girls of 12 Working in "Young Red Light Area", Say Police, 11 Jun' *NZ Herald* (2010).

¹¹⁶ Holger-Ambrose and others, 'The Illusions and Juxtapositions of Commercial Sexual Exploitation among Youth: Identifying Effective Street-Outreach Strategies' (2013) 22 *Journal of child sexual abuse* 326.

¹¹⁷ Bryce Garreth Westlake, 'The Past, Present, and Future of Online Child Sexual Exploitation', *The Palgrave handbook of international cybercrime and cyberdeviance* (2020).

In a response to a Police request the NZPC reported that from June 2009 to June 2010 they had been in contact with 18 underage workers out of a total of 113 in Auckland CBD and 106 in Manukau, which is 8.95%.¹¹⁸ However, this figure is extremely low by international standards or even by the NZPC's own figure for street prostitution which they provided for the CSOM, which states that 56% started before the age of 18.¹¹⁹ From 2004 to 2011 there were 133 charges prosecuted and 57 convictions under the PRA for under-age prostitution.

One issue with underage prostitution is that a young person may not self-define as being involved in prostitution. People who exchange sex for drugs, food, or accommodation may not label this 'prostitution'.¹²⁰ Further, young people who have involvement with 'Sugar Daddies' - paid sexual 'relationships' with rich, older men – may not recognise this as prostitution. The NZPC have recently started admitting that young people are involved with Sugar Daddies and that this is increasing.¹²¹ Typically, the NZPC report "the young people the NZPC have been in contact with are not controlled by gangs".¹²² However, as discussed above, there are many reports in the media that gangs are involved. This indicates that the NZPC simply does not have contact with many of the young people being abused or that they are not aware of the circumstances of those they do have contact with.

On 17th January 2018 the Ministry for Vulnerable Children, Oranga Tamariki, replied to an OIA request regarding the funding specifically provided to NGO's to provide support for underage sex workers to prevent them being used for prostitution. They said that they had reviewed documents associated with NGOs but had not identified information regarding this since "this particular group is not specified as a target group in documents".¹²³

The Roast Busters in New Zealand – involving the intoxication and rape of young girls – gave rise to protests on the issue of rape and victim-blaming culture.¹²⁴ The failures in protecting these girls echoes the failures in relation to underage prostitution. Notable examples include the arrest of an Auckland operator who trafficked a 15 year old girl, raped

¹¹⁸ NZPC report Jan -June 2010 Appendix 3 pp73-80.

¹¹⁹ Abel, Fitzgerald and Brunton (n 13) p61.

¹²⁰ NZPC report Jan -June 2010 Appendix 3 pp73-80.

¹²¹ NZPC report Jan-July 2019.

¹²² NZPC Report Jan-June 2010 p78

¹²³ OIA dated 17th January 2018 to the Ministry for Vulnerable Children.

¹²⁴ Alex Casey, 'From I'm Still Living It': A Roast Busters Survivor's Story, 25th January' *The Spinoff* (2019) <<https://thespinoff.co.nz/society/25-01-2019/im-still-living-it-a-roast-busters-survivors-story/%0A>>.

her himself, and advertised her on an internet escorting agency.¹²⁵ The operator was jailed for only 2 years and 10 months. A Christchurch Brothel owner was given home detention in 2008 for pimping girls aged 14 and 16.¹²⁶ These are only the cases that actually involved arrest, it is clear that many do not.

There is little to no activity to support these young people. An OIA to the Ministry for Vulnerable Children to identify funding for these youths could not identify any specific funding for NGO's.¹²⁷ As little or no funding is specifically allocated it would appear that recommendation 17 – to increase funding for NGOs working with at risk youth - has been ignored. Recommendation 16 recommends a collaborative approach between Police, the Ministry of Social Development, the Ministry for Youth Development and relevant NGOs should be taken to assist at risk youth and Recommendation 19 states that girls who come forward should be supported to prevent being abused in prostitution. The only NGO engaged is the NZPC who record meetings in their reports but do not have any contact with girls in gangs (because they deny that this occurs).

The NZPC report they provide support for those who come to their attention, mainly by passing them to social services. Sadly, many children who are in need are excluded from support by social services, housing support, and other life-saving provision. Some of the girls are on the run from CYFS care, and some are too young to get Independent Youth Benefit (a benefit specifically for young people). A further problem is that many young people do not trust CYFs and other government social services because they get passed from one carer to another after a short time. This inhibits any opportunity for a trusting relationship to develop between the girl and a particular carer. The failure to support these vulnerable young people in NZ is fully covered in in an ECPAT NZ paper “Children and survival sex: A social work agenda”.¹²⁸

Trafficking and Immigration

¹²⁵ Sam Hurley, 'Auckland Couple Flew Underage Teen into City to Work as Prostitute' *New Zealand Herald* (2018).

¹²⁶ Stuff, 'Christchurch Brothel Owner Loses Name Suppression. 31st Jan' *stuff.co.nz* (2009) <<http://www.stuff.co.nz/the-press/news/our-communities/271261/Christchurch-brothel-owner-loses-name-suppression>>.

¹²⁷ OIA dated 17th January 2018 to the Ministry for Vulnerable Children.

¹²⁸ Natalie Thorburn and Irene de Haan, 'Children and Survival Sex: A Social Work Agenda' (2914) 26 *Aotearoa New Zealand Social Work* 14.

The NZPC estimate that 20% of workers are illegal immigrants.¹²⁹ These workers are acknowledged by the NZPC in their reports for offering unsafe sex and performing extreme sex acts, both of which enables them to get more work. Over the years there is plenty of evidence that migrant workers suffer poor treatment, have little protection against violence and exploitation, are disadvantaged by a lack of access to financial services, and are unable to advocate for themselves because of the language barrier (which has resulted in NZPC employing interpreters).¹³⁰ The NZPC argue that legalising prostitution for migrants will make them safer because they will be able to take their complaints (of the violence and abuse) to the police. This ignores their own survey that found that less than 20% of New Zealand workers themselves report violence and abuse to police.¹³¹

Irrespective of this the NZPC have been mounting a vigorous media campaign to overturn clause 19 and allow women to work in prostitution on temporary visas. At the beginning of 2018 they hosted a forum with MIBE¹³² and other government organisations and NGO's about migrant workers and made reports to news outlets in favour of allowing migrant workers to prostitute. They also persuaded the Equal Employment Commissioner Dr Jackie Blue to take the issue up with CEDAW (Committee on Elimination of Discrimination Against Women) in Geneva. They made submissions to other organisations including an oral presentation in July 2018 to the United Nations. A group of 26 NZ prostitutes have gone public in the media to reject the NZPC calls for a change in the law and raising the concern that even present immigration laws not are not being upheld.¹³³

The situation of trafficking in NZ is covered extensively in media articles.¹³⁴ It has also been identified for many years by the US Trafficking in Persons report. Until 2015, NZ claimed it didn't have a human trafficking problem because they defined it as only cross boarder trafficking as opposed to internal trafficking, which is included in the global definition.¹³⁵ By international standards, acts such as underage prostitution, the withholding of papers/passports, and not being able to say no to clients are all classified as human trafficking. The NZPC has documented many of these offences but euphemistically calls them "managerial issues".¹³⁶ Further, the NZPC national coordinator Catherine Healy said

¹²⁹ NZPC Report Jan-June 2018 p12.

¹³⁰ NZPC report July-Dec 2010 p33, and in other NZPC reports more generally.

¹³¹ Abel, Fitzgerald and Brunton (n 25).

¹³² NZPC Jan-June 2018 report

¹³³ Tan (n 2).

¹³⁴ Olivia Carville, 'Exposed: The Dark Underbelly of Human Trafficking in New Zealand, 21st Sept' *New Zealand Herald* (2016).

¹³⁵ *ibid.*

¹³⁶ NZPC reports.

pimps had "almighty power" over illegal migrant prostitutes.¹³⁷ At this time the NZPC are still maintaining that there has been no evidence of trafficking in NZ.¹³⁸ Instead of addressing the issue of trafficking, the NZPC deny its existence and instead publicise the attractions of a 'working holiday'.¹³⁹

It is worth noting that Immigration officers are the only officials who can enter any premises (i.e. make a surprise visit), whether it is a brothel or private premises, without a warrant to serve or execute deportation papers. They respond only to complaints and do not proactively seek to identify and stop illegal activity. In a reply in December 2017 to an OIA requesting information on visits immigration made to brothels, and the evidence found and action taken, MIBE said it was too difficult to collate or research.¹⁴⁰

11) Lack of Exiting Support and Prevention

In order to sway the parliamentary vote on the PRA it was argued that the Bill could deter the entry of people into prostitution, and facilitate those that had entered to exit.¹⁴¹ It should be noted that the Ministry of Health contract with the NZPC does not include any clauses on exiting. There is no mention on the NZPC website of exiting or of them providing help or assistance to exit in contrast to substantial support for establishing prostitution businesses. In fact, the NZPC are against exiting services as it undermines the idea that prostitution is simply normal work.¹⁴² In fact, there has been documented accounts of hostility towards exited women both in person and online.¹⁴³ The PLRC 2008 supports exit but nothing has been done beyond this, with a hint that this may be for economic reasons.¹⁴⁴

There are very few supported routes out of prostitution on offer. An OIA has shown that no government funding has been allocated to enable exit services to be provided (even for underage persons).¹⁴⁵ There are few, if any, NZ NGO's who focus on enabling people to

¹³⁷ Madison Reidy, 'Illegal Migrant Prostitutes Too "terrified" to Report Exploitation, 18th Mar' *Stuff* (2018) <<https://www.stuff.co.nz/business/102248502/illegal-migrant-prostitutes-too-terrified-to-report-exploitation>>.

¹³⁸ Healy, Wi-Hongi and Hati (n 32).

¹³⁹ Reed (n 25) at 28 mins.

¹⁴⁰ OIA Dec 2017 to Minister of Business Innovation and Employment.

¹⁴¹ Hansard (n 16).

¹⁴² MOJNZ, 'Key Informant Interviews Review of the Prostitution Reform Act 2003, Feb 02' *Ministry of Justice New Zealand* (2010) <<https://web.archive.org/web/20100522112507/http://www.justice.govt.nz/policy-and-consultation/legislation/prostitution-law-review-committee/publications/key-informant-interviews>>.

¹⁴³ Raymond (n 44); Bindel (n 38).

¹⁴⁴ PLRC (n 5).

¹⁴⁵ OIA dated 24 Jan 2018 to the Ministry of Social Development.

exit in contrast to over a million dollars per year that funds NZPC. None of them provide any accommodation which is the cornerstone to achieve successful exit.¹⁴⁶ The PLRC suggested that there should be support for those who wish to leave the industry based on best practice principles that are tailored to meet the needs of the individual worker.¹⁴⁷ As the report stated, exiting is often a long and involved process. A recent UK report by the UK Home Office noted the uncertainty of support services in NZ, referring to its 'ambivalence'.¹⁴⁸

This is in spite of the PLRC 2008 stating that only 15% intend to prostitute for more than 5 years.¹⁴⁹ The result is a sizable number either exiting or attempting to exit each year. The CSOM report states that 51% of the 772 survey participants had stopped working in the sex industry at least once.¹⁵⁰ The Ministry of Justice PLRC Key Informants Report shows the general rate of those wishing to leave in other countries is around 65% (i.e. *only 35% do not want to exit*).¹⁵¹ One study recorded that only 8% did not want to exit.¹⁵² In fact, in this study when asked about the reasons for staying only 23.5% in NZ said they didn't want to do anything else.¹⁵³ These figures are likely to be underestimations of the number who would exit if offered a viable alternative. Many women do not begin to hope for exit until they see a clear path and have support.¹⁵⁴

Regarding prevention, the PLRC 2008 highlighted the paucity of services, particularly for young people, and lack of residential care, which was due to a lack of funding.¹⁵⁵ The Ministry of Justice report "Key informant interviews" explored the reasons for entering prostitution underage and concluded that all NGOs needed to have increased funding.¹⁵⁶ Sadly, funding is much worse today and in practice an OIA in 2018 showed there is effectively little or no government support for any NGO organisation countrywide.¹⁵⁷ In the 2008 report, the government state that they can support prevention by offering young people

¹⁴⁶ Matthews and others (n 18).

¹⁴⁷ PLRC (n 5); Abel, Fitzgerald and Brunton (n 25).

¹⁴⁸ Kelly, Coy and Davenport (n 1) p44.

¹⁴⁹ PLRC (n 20) table 13.

¹⁵⁰ Abel, Fitzgerald and Brunton (n 12) 2.1 and 2.2. p20.

¹⁵¹ MOJNZ (n 142).

¹⁵² Melissa Farley and others, 'Prostitution in Five Countries: Violence and Post-Traumatic Stress Disorder' (1998) 8 *Feminism & Psychology* 405.

¹⁵³ PLRC (n 20) table 15.

¹⁵⁴ Matthews and others (n 18).

¹⁵⁵ *ibid* Section 7.11.2, p 111.

¹⁵⁶ MOJNZ, 'Key Informant Interviews Review of the Prostitution Reform Act 2003, Feb 02' *Ministry of Justice New Zealand* (2010) section 8.5

¹⁵⁷ OIA dated 17th Jan 2018 to the Ministry for Vulnerable Children.

the same youth support that is available to everyone.¹⁵⁸ No specialist provision or strategy for prevention has been offered.

12. Recommendations

These recommendations are specific to the political and policy context in New Zealand and is not an endorsement of the policy framework.

Improved Practice

- The 27 recommendations in the PLRC 2008 should be acted upon
- Police training for dealing with women involved in prostitution, as well as children and gangs.
- Name suppression should be available for workers who report violence to police either before, during or after a court case.

Amending and Implementing The Law

- Brothels and pimp “managers” should be reverted back to be an illegal state. In order to do this a suitable time period of say 2 years should be given. Legalising pimping has allowed this so called “management system” to continue the coercion and abuse that occurred before the PRA. It does nothing to improve the health or safety of the women and this is demonstrated by the unacceptable rates of coercion and abuse.
- Until such time as the change is made make pimping illegal, the procedure specified in the PRA regarding inspections should be adhered to and carried out on a random and pro-active basis.
- SOOBs with the number of workers clearly defined should be retained, but be made readily accessible for inspection.

¹⁵⁸ PLRC (n 5).

- SOOBs should be inspected and a new certificate for SOOBs specified which includes an agreement that inspections will be facilitated, and include the address of the property. A register of addresses should be held by the court and only be accessible to government agencies.
- The NZPC should be retained specifically for, but limited to, health education and clinical services. This is in recognition of the useful work in this area. Their contract should be monitored and activities set out clearly to justify their funding.
- Monitoring and evaluation of the law should be carried out by independent researchers, with the recognition that the NZPC has a vested interest as a lobby group.
- Notwithstanding the above and below, which presupposes some retention of the PRA 2003, adopt an approach that challenges the normalisation of prostitution, seeking to reduce demand and raise awareness of the realities of prostitution.

Child Sexual Exploitation

- Protecting children through educational outreach (such as the signs of grooming) and, more widely, promotion of healthy relationships
- Utilising the maximum sentences for perpetrators of child sexual exploitation and proactively seeking to identify and prosecute perpetrators. The police should also proactively check the age of people involved in prostitution if they look under the age of 25.
- Since up to 56% are known to start prostituting before the age of 18 these should be a target group for data collection to establish trends (this should have been done by the NZPC under the terms of their contract).
- Targeted youth accommodation and general support, including social work support focused on care instead of risk management, should be made for children, as well as follow on support for 18 to 21 year olds.

Trafficking

- Acknowledge the problem of domestic trafficking and bring the definition of trafficking in line with the Palermo Protocol.
- Proactively seek information and investigate brothels.
- The PRA Law on immigrant visas should be upheld.

Exiting and Prevention

- Support for women exiting, particularly accommodation.
- Support for prevention, particularly focussing on funding programmes for those under 21, particularly children.

Appendix 1:

Table of PLRC Recommendations and Progress Towards Them

Number	PLRC 2008 page	PLRC Chapter and Recommendation Item Number	Recommendation	Implementation
		Chapter 2	Estimation of the Number of Sex Workers in New Zealand (Chapter 2)	
1	41	1	The New Zealand Prostitutes' Collective (NZPC) maintains the databases of street-based sex workers created by outreach workers in the Auckland, Wellington and Christchurch	Publicly NO, but unofficially they have a text system

2	41	2	NZPC continues to monitor numbers of brothel-based workers and SOOBs	NO
3	41	3	Any future research into prostitution in New Zealand focuses on the health and safety of sex workers, their employment status, and human rights, rather than solely the numbers of people involved in the industry	
		Chapter 3	The PRA and Human Rights (Chapter 3)	
4	47	1	Information on the requirements of the PRA regarding the right to refuse a client be made clear in information provided to brothel operators upon application for a brothel operator's certificate	YES
		Chapter 4	Health, Safety and Well-being (Chapter 4)	
5	59	1	The Occupational Safety and Health service of the Department of Labour consider supplementing the OSH guidelines for the sex industry with smaller, user friendly pamphlets	YES
6	59	2	The government provides additional funding to the Ministry of Health to enable Medical Officers of Health to carry out regular inspections of brothels	NO
7	59	3	Police and the sex industry look to the approach taken in Christchurch as a mutually beneficial way of managing their relationship	Not Widespread
		Chapter 5	Avoiding or Exiting the Sex Industry (Chapter 5)	
8	83	1	The government make available adequate funding for the establishment/continuation of NGOs that can provide a range of services to the sex industry, including assistance with exiting for those who wish to exit	NO
9	83	2	Relevant government agencies should have an ongoing duty to provide NGOs with information on services available to sex workers wishing to	NO

			exit, who could then have access to this information from a 'one stop shop'	
10	83	3	Support for those who wish to leave the industry should be based on best practice principles that are tailored to meet the needs of the individual worker	NO
11	83	4	Sex workers who do not wish to leave the industry should also be offered support and advice from NGOs Provision of advice and information on health and safety, professional best practice, rights and responsibilities and available government services should be available to all sex workers	YES, by the NZPC
		Chapter 6	The Brothel Operator Certification System (Chapter 6)	
12	97	1	The current certification system be maintained, but the PRA be amended to extend the period of certification validity to three years	NO
13	97	2	The PRA be amended to ensure the list of certificate holders be available to be searched by Police, Immigration, OSH, and Medical Officers of Health for the purpose of facilitating the inspection of brothels and brothel operators	NO
14	97	3	Comprehensive information on brothel operators' rights and responsibilities should be provided to applicants at the time they receive a certificate	NO
15	97	4	Applicants must agree to facilitate inspections to obtain a certificate	NO
		Chapter 7	The Use of Under Age People in Prostitution (Chapter 7)	
16	115	1	A collaborative approach between Police, the Ministry of Social Development, the Ministry for Youth Development and relevant NGOs should be taken to assist at risk youth	YES, but Limited.

17	115	2	The Ministry for Youth Development and the Ministry of Social Development deliver increased funding to NGOs working with at risk youth	NO
18	115	3	Section 48 of the Children, Young persons and Their Families Act 1989 be amended to include young people aged 17 years	YES
19	115	4	The Ministry of Social Development should ensure when approached by, or on behalf of, young persons at risk, that they are adequately supported to prevent the young person being used in prostitution in order to survive	NO. Not to the extent required
		Chapter 8	Street-Based Sex Workers (Chapter 8)	
20	133	1	Legislative approaches that aim to criminalise street-based sex workers should be avoided	YES
21	133	2	Street-based sex workers should be supported to work safely and with consideration for local communities	YES
22	133	3	Street-based sex workers should be encouraged to find alternatives to street-based sex work NGOs should be adequately funded to facilitate this	YES, but only the NZPC is funded
23	133	4	Local government should adopt practical solutions to manage areas used by street-based sex workers and their clients	YES to a limited extent
		Chapter 9	Response of Territorial Authorities to the PRA (Chapter 9)	
24	149	1	Local Government New Zealand (LGNZ) should consider updating the Prostitution Reform Act Guidelines issued in 2003	NO
		Chapter 10	Employment Conditions (Chapter 10)	
25	160	1	The sex industry should be encouraged through education, consultation and advocacy to move to the situation where brothel-based	YES, but very limited

			sex workers have a best practice-based written contract with a brothel operator	
26	160	2	The decision as to whether to enter a contract of service, or a contract for service, be left entirely to the parties to the contract, with the general employment law, the Employment Relations Authority and the Employment Court available as for any industry	YES
27	160	3	The Department of Labour and IRD should work with the sex industry to clarify any misconceptions about the right to say 'no' regardless of sex workers' employment status and the choices that are available to sex workers regarding their employment status	?
28	160	4	Information to be provided to brothel operators during the certification process about their employment responsibilities should include providing information to sex workers about their employment rights	NO

Appendix 2: OIA Summary List

Item	Topic	Date of Reply	Question, Response, Implications	Request Made To
1	NZPC 6 monthly reports to the Ministry of Health	June 2014 to 2019	Request for the NZPC 6 monthly reports which were supplied to the Ministry of Health. After initial request in 2014, further requests were made to obtain reports up to 2019. Reports were supplied shortly after each request.	Ministry of Health
2	Numbers of Sex Workers		As recommended in the PLRC 2008 - to provide the numbers of Brothel and SOOB based workers, as well as the number of	Minister of Justice

			<p>Street workers in the main cities, per year from 2003 to 2017.</p> <p>Refused as the information is not held by the ministry and has no grounds to believe it is held by another department, Ministry of the Crown, organization or authority.</p> <p>Failure to provide evidence-based data to support government stance not to review the PRA 2003.</p>	
3	Immigration visits to check on illegal and trafficked sex workers		<p>Provide the number of visits made to premises to check for illegal immigrants and trafficking for the years 2003 to 2017. Provide details of how many such visits found evidence, and what actions were taken against the management and staff.</p> <p>While Immigration officials make such visits, the request was refused as the information was too difficult to research and collate.</p> <p>The Policy and Law Page of the Ministry of Immigration states that checks and actions are taken. But useable records are not kept to justify their activities.</p>	Minister of Business Innovation and Employment. (MBIE)
4	Brothel Inspections	Apr 2018	<p>For the years 2003 to 2017:</p> <p>Provide funding allocated specifically to Medical Officers of Health to carry out regular inspections of brothels. Provide details of how many brothel inspections have been carried out and what were the findings.</p> <p>No funding has been provided.</p>	Minister of Health

			<p>The Ministry of Health has no records of carrying out inspections.</p> <p>Medical Officers of Health are employed by the District Health Boards. They do not routinely report to the Ministry of Health.</p> <p>No funding is provided by the Ministry to fund brothel inspections to meet the PRA 2003 law.</p>	
5	Number of Brothel Inspections carried out by Medical Officers	Jan 2015	<p>How many brothel inspections had been carried out by Medical Officers of Health as specified in the PRA 2003 Law between 2003 and 2014.</p> <p>Replies from each DHB varied. Christchurch denied having any brothels!</p> <p>The NZ ombudsmen official eventually obtained answers for every DHB. A total of 11 Brothel inspections had been inspected across NZ in 10 years.</p> <p>Brothel inspections as specified in the PRA 2003 have never been implemented.</p> <p>Additional finance to cover this operation was refused.</p>	<p>Raised 28 Feb 2014</p> <p>Medical Officers of Health, Dept of Labor.</p> <p>9th June</p> <p>OIA transferred to DHB's. (via Ombudsman)</p>
6	(ACC) Injury claims of workers in sex industry	9 Jan 2018	<p>ACC Claims for work Related accidents from 2003 to 2017</p> <p>Tables of Levy Payers by year supplied after 2008. Declined to provide information prior to 2008 as the information does not exist.</p>	Ministry of ACC.

			Minimal cases reported (max 13 per year). However, the CSOM 2007 p15 says 18% had works related injury.	
7	Funding for exiting between 2003 and 2017	24 Jan 2018	<p>Details of funding made to NGO's for the establishment/continuation of services to the sex industry including assistance with exiting.</p> <p>Ministry of Social Development contacted Ministries of Health, of Justice, MBIE, or WorkSafe. None have any information. Hence the OIA request refused.</p> <p>No funding has ever been provided despite this being recommended in the PLRC 2008 and underpinning the rationale behind the 2003 law.</p>	Ministry of Social Development
8	Funding for children abused in prostitution	17 Jan 2018	<p>Provide details of funding to NGO's working with at risk youth.</p> <p>The request was refused as this group are not specified as a target group.</p> <p>It is apparent that in spite of clients and procurers being liable for 14 years imprisonment, children in prostitution are not considered vulnerable.</p> <p>The recommendation to fund support of at risk youth made in the PLRC 2008 has been ignored.</p>	Minister for Children. Reply from Ministry for Vulnerable Children. Oranga Tamariki. Ministry for Vulnerable Children
9	Ability of workers to	10 July 2018	Dept Labour and IRD work together to clarify misconceptions regarding the right to say	Ministry of Workplace

	refuse clients		<p>“no” regardless of a sex workers employment status.</p> <p>What work and evidence is available to show that this has been completed?</p> <p>For the years 2003 -2017: How many complaints have been received under OSH regulations, regarding the right to say NO, e.g. complaints of brothel managers pressurising workers to accept clients they wish to refuse, imposing fines, unreasonable work requirement, or encouraging the use of unsafe sex? What has been the outcome from each complaint?</p> <p>Prior to 2012 information was unable to be supplied.</p> <p>Between 2012 and 2017, 3 investigations were undertaken.</p> <p>Only one breached minimum employment standards (but no details were supplied).</p> <p>The results conflict with the frequency reported by the NZPC reports. Pressure put on sex workers to accept clients and to have unsafe sex were frequently made in their reports.</p> <p>Failure by the Ministry of Health to follow up on these complaints has been a fragrant breach of the PRA 2003 law.</p>	<p>Relations & Safety.</p> <p>DOI 1718-1640.</p> <p>Replied 10th July 2018 by Ministry of Business, Innovation & Employment</p>
10	Offences for commercial sex with	19 Dec 2017	<p>Provide details of the following offences:</p> <ol style="list-style-type: none"> 1. Assisting an under 18-year-old to provided commercial sexual services. 	Ministry of Justice

	under age persons		<ol style="list-style-type: none"> 2. Receiving earnings from a person under 18 years old. 3. Contracting for commercial services for with an under 18-year-old. <p>Two tables were supplied, one for charges and the second for the convictions against each year.</p> <p>The tables demonstrate how few charges and convictions have been made.</p>	
11	Criminal Safe Sex Offences between 2007 and 2018	1 Nov 2018	<p>Police proceedings against offenders for:</p> <ol style="list-style-type: none"> 1. Sex worker or client fails to adopt Safer sex practices 2. Induce/Compel To Adopt/Promote Safe Sex. 3. Operator Fail To Adopt/Promote Safe Sex. <p>A table was provided by the NZ Police giving the requested information.</p> <p>The results conflict with the frequency reported by the NZPC reports. In many years there were no charges at all. The only charges for Induce/Compel were 2 in 2012. The total charges for the 3 situations were 7 in 10 years.</p> <p>On this basis no coercion exists in the sex industry, whereas this is patently false when compared to even the NZPC's reports.</p>	Ministry of Justice
12	Cost of the PLRC Report	28 June 2018	Cost to produce the report including a breakdown by section including all specific research.	Ministry of Justice

			<p>Total cost covered a number of years and is too difficult to calculate. However, the cost of research commissioned by the committee was provided.</p> <p>The total cost of reports commissioned was \$777,006. This included \$665,606 for the research interviews etc. for CSOM 2007 which was undertaken by the NZPC.</p>	
13	<p>NZPC 6-Monthly reports</p> <p>Information requested regarding responses by the Ministry of Health to the information supplied</p>	June 2018	<p>To query what, if any, actions had been taken as the result of the information supplied in the NZPC 6 monthly reports. To establish what contract monitoring had taken place and what additional information had been requested by the Ministry of Health as a result of the information the NZPC had either provided, or neglected to provide, in their reports.</p> <p>No queries or actions were raised as a result of the reports which they acknowledged they received from the NZPC. No action was taken to monitor the contract between the NZPC and the Ministry of Health. The reports were simply forwarded to portfolio managers.</p> <p>The Ministry of Health, Sector Operations failed to monitor the performance of the NZPC to ensure they met the requirements set out in the contract. This is a specific responsibility of Sector Operations.</p> <p>Failure of the NZPC to meet the contract requirements, specifically those agreed in the Logic Programme, means the opportunity to provide vital trends in the sex industry have</p>	Ministry of Health, Sector Operations

			<p>been missed for between 2011 and the present.</p> <p>Additionally, the Ministry of Health failed to follow up PRA 2003 on prosecutable offences notified to them by the reports, and failed to comply with the legislation set out in the PRA 2003 to ensure brothel inspections were carried out by Medical Officers of Health.</p>	
14	A Review of the PRA in 2018	24 Dec 2018	<p>Review of PRA as Recommended by PLRC 2008 review section 14.</p> <p>“No plans to review the operation of the PRA at this time.”</p> <p>Recommendation Ignored.</p>	Ministry of Justice
15	Requesting preparation work done to review the PRA in 2018	11 Mar 2020	<p>Information on the plans to review the PRA as Recommended by PLRC 2008 review section 14 prior and subsequent to the 2017 election.</p> <p>No plans to review the PRA and internal documents that fall within the scope of the request do not exist.</p> <p>There has never been any intention of reviewing the PRA in 2018 as recommended by the PLRC 2008.</p>	Hon Andrew Little, Minister of Justice