Formation and Outcome: The Political Discourses of the New Zealand Prostitution Reform Act, 2000-2003

Catherine Zangger

A Thesis
in
The Department
of
Sociology and Anthropology

Presented in Partial Fulfillment of the Requirements
for the Degree of Master of Arts (Sociology) at
Concordia University
Montreal, Quebec, Canada

July 2009

Your file Votre référence
ISBN: 978-0-494-63031-0
Our file Notre référence
ISBN: 978-0-494-63031-0

Formation and Outcome: The Political Discourses of the New Zealand Prostitution Reform Act, 2000-2003

Catherine Zangger

The aim of the thesis is to explore language use in the social processes of law reform. Between 2000 and 2003 New Zealand (NZ) underwent a major legal amendment and provides an ideal context for such an analysis. During that period, social policies surrounding the sex industry underwent a legal change: from criminalization to decriminalization. The specific research undertaken for my MA thesis is an analysis of NZ parliamentary debates surrounding the *Prostitution Reform Bill* (PRB) that led to that change. Using critical discourse analysis (Fairclough 1993) to examine the NZ parliamentary debates, I discuss the discursive framings which allowed the enactment of the PRB. Furthermore, I examine other government documents relating to the legal change in 2003 and newspaper articles to contextualize it. The NZ parliamentary transcripts, government documents, and news clippings, which are available free on-line, provide a rich starting point for studying the relationship between language use, law reform, and judicial policy surrounding the politics of sex work. By analysing the NZ political debates in relation to the PRB, the thesis demonstrates that Members of Parliament (MPs) opposing the law reform capitalized on the moral order rhetoric to highlight the divide between public and private spheres and to argue for added protection for the community instead of sex workers. Those in support also used this dichotomy but to promote the rights of sex workers. This created discursive divides among MPs and changed the content of the PRB. These tensions are discussed in order to use this political phenomenon to further inform the debate surrounding social movement and outcome.

Table of Contents

Formation and Outcome: Political Discourses surrounding the New Zealand Prostitution Reform Act, 2000-2003

Chapter I- Introduction

Kantola and Squires (2004) and Outshoorn (2001) argue that political discourses can close or open doors for new policy measures. Although not all social movements aim for political change, the movements that do depend on the persuasion of political actors for success can rely on discourse as a strategy (McCammon et al. 2007). New Zealand (NZ) gives us an ideal case study to analyse the role of ideas in policy formation. In 2003, NZ became the first nation-state to decriminalize sex work, and has been the aim of the sex workers' rights movement since its birth in 1973 (West 2000). Thus, the political outcome in NZ signifies a victory for the movement. According to the sex workers' rights movement, decriminalization is the ideal legal framework for the safety of sex workers. Using NZ Parliamentary Hansard and theoretical concepts from Nikolas Rose (1999), Norman Fairclough (1993), and Dorothy Smith (1998), the thesis demonstrates a positive relationship between discursive framings and policy change. By analysing the NZ political debates between 2000 and 2003 in relation to the *Prostitution Reform Bill* (PRB), the thesis demonstrates that Members of Parliament (MPs) opposing the law reform capitalized on the moral order rhetoric to highlight the divide between public and private spheres in order to argue for added protection for the community instead of sex workers. They also created discursive divides among MPs by accusing the PRB of changing its legal aim from decriminalization to a legalization model.

To begin, this chapter describes the political context of the policy change. Afterwards, Chapter II describes the methodology, data, and theoretical concepts used to identify the sites of contestation. Chapter III sets up the debate by describing how

competing MPs (Opposing and Supporting MPs of the PRB) viewed 'the role of law' regarding public and private spaces. This chapter reduces the conflict to the public and private paradigm. With an understanding on how competing MPs view 'the role of law', Chapters IV, and V outline the competing discursive framings present among political actors regarding the legal frameworks suggested. More specifically, Chapter IV examines how the PRB is discussed by Opposing MPs and Chapter V discusses how the PRB was described by Supporting MPs. To finalize, the relationship between discursive framings and policy change is discussed in Chapter VI. The final chapter is based on a discussion of the observed competing discursive framings identified in the previous chapters and the changes made to the PRB.

Political discourses surrounding sex work

With the rise of the sex workers' rights movement, sex work has become a subject of many political debates, however, there has been little research conducted on the political discourse surrounding sex work. Previous work includes a feminist analysis of the dominant political discourses surrounding sex work in the UK by Kantola and Squires (2004). They demonstrated that "The dominance of the public nuisance discourse led to very specific policy responses, which focus on strategies of driving prostitution away or containing it within a strictly regulated area" (85). The findings show that certain issues were not brought forth within the UK political arena due to the lack of the sex work discourse or of pro-rights feminism. Furthermore, they assert that "the rights of women as prostitutes fail to be prioritized within UK policy debates as a result of the marginality of the sex work discourse" (Kantola and Squires 2004: 77). This was also noted by Outshoorn (2001) within the Netherland political context.

Furthermore, Outshoorn (2004) and others (Jeffrey 2004; Sullivan 2004; Kantola and Squires 2004a) have completed policy debate studies in Australia, Austria, Canada, Sweden, Britain, Finland, France, Israel, Italy, Netherlands, and Spain. The research locations are quite vast, however, the number of articles in each context is limited to a few, and no study has been done in NZ. A lack of research in relation to political debates surrounding sex work leads to an incomplete picture of the politics surrounding sex work.

Another crucial aspect to consider when examining discourse and policy change is the history of the text examined. From its introduction to its enactment, the PRB underwent significant changes and these have been included in the analysis. As Outshoorn (2004) and Smith (1990) argue, the formation of a legal document is as important to study as the outcome. Neglecting the evolution of the PRB, leads to an inaccurate and incomplete discussion of the effect of discursive framings on the political outcome in NZ.

NZ is particular in so far as it adopted a decriminalization approach to the sex industry. This is the first country to do so (Weitzer 2008). There are three main types of legal models applied to the sex industry: criminalization, legalization, and decriminalization. The criminalization model criminalizes all or parts of sex work related activities. This model, though different in details, is currently in place in Canada (Lowman 1998; 2000), the UK (Kantola and Squires 2004a; 2004), and Sweden (Svanström 2004). As Pinto, Scandia, and Wilson (1990) assert, there are three main categories of criminal law that are used to regulate the purchase of sexual services: laws which punish the people involved in the management and organization of the sex work, usually by criminalizing the activities surrounding the act; laws which punish the selling

and buying of sexual services, and, although uncommon, laws which target only the buyer, as in Sweden. For example, Canada is representative of a quasi-criminalization model since the act of sex work remains legal even if all other activities surrounding the activity are not. Differently, Sweden represents another form of criminalization, rather than criminalizing the act per se or the activities relating to it, Sweden opted to criminalize the client when seeking or using such services. Regardless of the intensity of criminality, advocates for criminalization aim at abolishing the sex industry by criminalizing the act or the activities surrounding it. Supporters of the criminalization system usually aim at adding greater restrictions on the sex industry or aim at criminalizing all parties involved in the commercial transactions including clients (Shaver 1985).

Legalization encourages a restricted and limited organizational framework for brothel management. For example, the legalization of the sex industry requires direct state control of the industry, including worker and management permits. According to Davis and Schaffer (1994), the legalization model does not abolish the illegal sector of the industry. On contrary, in Victoria, Australia the illegal sector of the sex industry increased after its legalization (Pyett and Warr 1997). Under this legal framework, the selling of sexual services becomes restricted to specific city zones limiting the number of permits or licenses issued to sex work related establishments and/or sex workers. This encourages the sustainment of an illegal sex industry. The legalization of the sex industry is in place in Victoria, Australia (Frances 2007), Nevada, United States (Albert 2001) and Germany (Weitzer 2008).

The third approach towards the sex industry is decriminalization. Decriminalization consists of the repealing of all sex work related laws. The aim is to create a safer and equitable work environment for people working in the sex industry by removing all criminal penalties relating to sex work. Sex work related laws are deemed to be outmoded and unnecessary to control the sex industry and the problems associated with it, such as public nuisances, addiction, HIV/AIDS, exploitation, abuse, etc. Advocates of this legal model argue that these nuisances can be dealt with by other laws found in other Acts. The sex industry would then operate under the same guidelines as any other industry, such as the food industry (Abel et al. 2007). In contrast to the legalization model, decriminalization does not promote the implementation of a framework controlling and managing the provisions of the services which prevents the development of an illegal sector alongside the legal sector. This is the model which was presented to the NZ Parliament in 2000 and is the legal model supported by the sex workers' rights movement (Weitzer 1991; Jenness 1993; Poel 1995).

The decriminalization of the NZ sex industry is important to analyze because of its unique approach to sex work and because it is timely. Additionally, the findings from the analysis contribute to numerous fields of knowledge such as the politics of sex work, social movement theory, feminism, and policy formation theory. The findings can also be used to help organizations, policy-makers, and activists when deciding how to frame their cause. As previously stated, the aim of the thesis is to begin a discussion on the role of discourse in policy making. It is important to observe and describe which discursive framings were politically influential in order to build a deeper and more comprehensive understanding of the relationship between discourse and policy change.

Turning a bill into law

Prior to 2003, decriminalization was not the legal framework adopted by NZ to deal with the sex industry. The legal regime in place at the time was punitive and categorized as criminalization. In the case of NZ, the act per se was legal but not the activities surrounding the act, and the legal sector was limited to massage parlours. For example, it was illegal to solicit for the selling of sex work, live on the avails, keep or manage a brothel, procure a person for the purpose of sex work, and to breach the Massage Parlours Act, making it extremely difficult to practice sex work without breaking the law. These laws affected all sectors of the sex industry: street workers, private/home workers, escort agencies and massage parlour workers. Even though there were few convictions, this legal environment created and instilled a climate of fear for sex workers and left little room for them to control how their work was organized, placing them at higher risk of violence, and abuse. Additionally, prior to 2003, clients were not subjected to legal sanctioning since it was only an offence to offer sexual services for financial gain, and not an offence to offer money for sexual services. The inequality of this situation was a leading argument for the writing and introducing of the PRB (Weatherall et al. 2001; Jordan 2005).

The PRB was introduced in NZ Parliament through a Member's bill. Member's bills are numerous and frequent and are discussed on Wednesdays. A ballot system is used to choose which bills will be discussed during that week. Every bill, including a Member's bill, must undergo a long political process (Appendix 1). All MPs hold the right to a vote after each 'reading'. A reading is a specific type of political debate. It encompasses prepared speeches given by MPs expressing their view and concerns relating to the proposed bill. In total there are three readings and at each reading the

survival of the bill is at risk since a defeat means its complete rejection. In addition to the three readings, a proposed bill must undergo two major examinations. The Select Committee, which is formed between the first and second reading, examines the proposed legislation in detail. This stage of making a bill into law consists of an invitation for public submissions. Afterward, the House invites public hearings relating to the proposed legislation. In 32 months, the Select Committee received 222 submissions and completed 415 hours of debate over any anxieties expressed concerning the PRB (Barnett June 25th 2003 l. 117-9). The submissions and the public hearings allow for external parties to voice their thoughts and concerns surrounding the proposed legal change. The submissions and public hearings may influence the decision over certain proposed amendments since the objective of the Select Committee is to formulate a report based on the conflicts and concerns raised by the submissions. Once the report is finished every MP has one vote per amendment. If all MPs agree to a change, it is automatically included in the proposed bill, however, if the change is not supported by all MPs the decision is made by the final vote at the end of the second reading.

The proposed bill undergoes a similar process between the second and the third reading. Following the second reading, a bill is given to a second committee called the Committee of the whole House. This is the last opportunity for MPs to address issues and anxieties relating to the proposed legislation. This time around only MPs can participate. It is the last time MPs can push for specific amendments before its enactment.

The objective of the Select and the whole House Committee is to ensure that the public has a say in the legal change, that every detail has been examined, and that the needed amendments are executed before its formal enactment. The importance of these

debates is attributed to the fact that the House permits a limitless amount of time for these debates. It is for this reason that large or controversial bills are debated for days. In the case of the PRB, the bill was before the Committee of the whole House for a total of four debates (March 26th 2003, April 30th 2003, May 14th 2003, and June 11th 2003). Once the PRB proposed bill underwent the above political process, allowing for input from the public and from other MPs in turn influencing the content and form of the final bill, it reaches its final stage before its enactment: the third reading. As the NZ Parliamentary website indicates, a proposed bill is rarely rejected if it survives to the third reading.

The third reading of a bill consists more of a sum up than a debate. As mentioned above, at this stage of the legislative process it is rare that it gets defeated therefore, the third reading is the last chance to convince MPs who remain 'on the fence'. Even though the final reading of the PRB took place on June 25th 2003, it was only enacted on June 27th 2003. As a formality, before a bill becomes law, it must be given Royal assent. In order to receive Royal assent, the bill must get signed by the Sovereign's representative in NZ, the Governor-General. In the case of the PRB, this took two days.

Contextualizing the Prostitution Reform Bill

Before moving into the analysis, it is necessary to contextualize the PRB. To fully understand the discursive framings utilized by the NZ Members of Parliament (MPs) (Appendix 2), we need to understand the political dynamics and climate present during the political debates. As Fairclough (1993) reminds us, discourse is dialectical and changing. The dialectical nature of discourse establishes the need to integrate a section that discusses and describes the internal and external factors affecting how political actors react towards policy change. Relying on information gathered through newspaper

articles, government documents and reports, as well as secondary sources such as journal articles, the following discussion describes the NZ political climate during the enactment of the PRB between 2000 and 2003.

Following its introduction, the PRB underwent a series of amendments. Within these debates and discussions, the MPs addressed all possible issues relating to the proposed legal framework and its implementation. All in all, the enactment of the PRB took three years. Its aim was to repeal all sex work related laws in order to create a safe and healthy work environment for people working in the sex industry, overtly declaring that the legal framework sought for was decriminalization.

The proposed legislative framework was controversial and caused great tension between NZ MPs. Political actors began questioning each other's sincerity and role as political actors. During the second reading, Association of Consumers and Taxpayers (ACT) NZ MP Stephen Franks described MPs supporting the PRB as revolting and despicable (February 19th 2003). He also questioned their motivations in supporting the PRB. Let's examine the following excerpt:

> My revulsion is at what appeared to me, throughout this, to be a kind of insincerity—I am not allowed, in the Chamber, to use the word that would describe it better. I came to feel revulsion for those who wanted to tap into looking fashionable, who wanted to tap into a list of noble objectives, but refused to look at the detail, and refused to look at what we were actually doing and how the law would actually work. (Franks February 19th 2003 l. 559-563)

According to the above statement, Franks assumed that MPs supporting the PRB are more preoccupied with their political status and position than the outcomes from its enactment. MPs were worried about supporting it because of possible future political repercussions.

In retaliation, MPs supporting the proposed law argued that MPs should not worry about political votes when deciding on how to vote for the PRB (October 11th 2000 l. 210-218). MP Maurice Williamson urged all MPs to remember the Homosexual Law Reform and how Fran Wilde (a former MP) went "against the swing" and then increased her majority. She did not lose votes in the following election in contrast, she gained votes. This comment shows that Williamson feels that the proposed bill can be deemed as 'radical' or as controversial (October 11th 2000 l. 210-226) but that it does not necessarily mean a decline in support at the following election. The tension and controversy born at the introduction of the PRB, was acknowledged by both the MPs opposing and supporting the reform.

To fuel internal tensions, MPs were able to choose whether or not to vote in accordance to their political party or their personal conscience. In the case of the PRB, most MPs chose to vote on a conscience vote instead of a political party vote. MPs from the Progressive Party, ACT NZ, NZ First, the National Party, and the Labour Party held opposing views and chose to follow a personal vote. Some MPs voted and declared overt support while others declared extreme opposition.

In contrast, the Green Party, and the Alliance Party chose to cast a political party vote. As Supporting MP Liz Gordon explained, even though not all members of the political party agree with the proposed bill, the party holds a policy which means that the party should be in support of the bill (October 11th 2000 l. 226- 229). Additionally, Green Party MP Sue Bradford was also pleased to announce that all MPs from the Green Party were supporting the enactment of the PRB (February 19th 2003 l. 814-815). The view held by the Green Party was conducive to the approach taken by the bill. The

Alliance Party and the Green Party both chose to partake in the debate from a political party perspective versus a conscience perspective.

In addition to internal tensions, the PRB was also affected by external events. External to the debates relating to the PRB, NZ underwent a federal election in 2002. Following nine years as the Governing Party, the National Party lost to the Labour Party. By forming party coalitions and depending on minority governments for popular support, the Labour Party Prime Minister (PM), Helen Clark remained in power for 9 years. From 1999 until 2008 Clark was an active supporter of the PRB.

The 2002 general election posed a threat to the PRB for two reasons. First it delayed the legislative process between the first and second reading, and secondly the PRB was exposed to and judged by new MPs. As a newspaper clipping argued, the PRB became the first moral test for the new 2002 Government. Even though the governing party and its leader remained the same, other changes occurred. A key change involved changes to the internal dynamics of the House.

By comparing the number of seats represented by political parties, there was a distinct change between the 1999 and the 2002 general election (Appendix 3). This is also represented in the political discourses present during the first and the second reading. For example, in the first reading the Alliance Party chose to declare overt party support for the PRB. In 2000, the party held 10 seats and therefore 10 votes. In the second reading, the Alliance Party held no seats in Parliament. In contrast, United Future NZ Party increased their presence in Parliament to 7 from 0 seats. A decrease in party support and an increase in party opposition placed the PRB at risk. The fear among the Supporting MPs also intensified in the second reading. This is discussed further in the

last chapter of the thesis. Nevertheless for the sake of this current discussion, it is important to understand that external dynamics played a role in how the debate surrounding the PRB evolved.

The internal and external political contexts of the PRB need to be included in the analysis in order to ensure an accurate and complete understanding of the relations between discourse and policy change. As described by Fairclough (1993), the aforementioned tensions are evidence of a hegemonic struggle. The recognition of power in discourse is to describe discourse and power in terms of hegemony (Fairclough 1993). A hegemonic instability allows for political opportunity and policy change, and the more stable the hegemonic order, the more difficult it is to bring forth policy alternatives. The introducing and embracing of new policy measures relies greatly on discursive framings and the ability to respond to counterclaims (Béland 2005: McCammon et al. 2007). Using techniques developed by Rose (1999) and Fairclough (1993), this thesis presents the competing political rationalities present in the NZ Parliamentary debates between 2000 and 2003 in order to demonstrate the discursive tensions and how they challenged the hegemonic stability relating to the politics of sex work.

Conclusion

The above discussion highlights the political context of the PRB. The factors mentioned above are not exhaustive but they are central to understanding the upcoming discussions surrounding the PRB. The tension between MPs stemmed from the clashing of different perspectives and understandings of sex work. With a deep understanding of the politics of the PRB, one can begin drawing links between the political discourses present at the readings and their political rationality. What arguments promoted the

support and/or opposition to the proposed bill? How were certain issues discussed and depicted? The political context of the PRB demonstrates how multiple factors play a role in how MPs choose to vote. Both the internal and the external politics are crucial to understanding the source of the tensions among MPs.

Chapter II - Methodology

Discursive framings allow for the production of social problems and their solution. As Brock (1998) showed, social problems do not simply appear, rather they are socially constructed. Sex work in Canada became political when pro-rights groups began to advocate on behalf of sex workers. The tension between the current Canadian legal regime and the solution advocated by sex workers' collectives brought forth a "process of renegotiation" (Brock 1998: 5). She describes the Canadian state as being "forced to take an increasingly active role to maintain its hegemony in the face of movements for social and sexual liberation" (Brock 1998: 5).

Along the same line as Brock (1998), this study aims to outline the problematization of sex work in New Zealand (NZ) between 2000 and 2003. More specifically, the aim of the analysis is to determine how NZ sex workers were made governable during the enactment of the *Prostitution Reform Bill* (PRB). As Rose (1999) argues, political rationalities hold the thought behind the governing. Therefore, the analysis of the political rationalities regarding sex work between 2000 and 2003 will reveal the discursive political relations between sex workers and political actors during the legislative process of the *Prostitution Reform Act* (PRA).

The following chapter outlines the theoretical and methodological issues and challenges faced while conducting the research. It begins by explaining the theoretical concepts used such as 'discourse' and 'political rationality' in turn outlining the theoretical framework adopted, and ends by addressing the methodology used and its challenges, as well as its application. By the end of this chapter I hope the reader will be able to comprehend the theoretical and methodological approach taken when analyzing

the political debates and newspaper articles used in this research and the importance of such an analysis.

Discourse as dialectical

Fairclough (1993) views discourse as the spoken and written use of language. It is also considered to be socially and historically situated. In other words, language and its use are relative to the social and political culture in which it is formed. Meanings of words are attributed and not inherent which makes meanings malleable and socially relevant. One cannot treat discourse as a separate entity of its social and political significance. As Fairclough (1993) emphasizes, discourse is dialectical in that it is "socially shaped and socially shaping" (134). Language allows for the analysis of current social and political thought and it allows for a point of resistance and change. Viewing discourse as dialectical enables words and their meanings to be described and analysed as social practices and as social constructions.

In addition to perceiving discourse as dialectical, this study will perceive and treat discourse as dialogical. Similar to dialogue, Bakhtin (Smith 1998) describes the need to view discourse as dialogical because it is shaped by its precedence. Discourses are responses to what was said before, and in relation to the expected response. In other words, discourse is shaped by its history and its context. For example, researchers and subjects formulate or adopt an order of discourse which contains 'speech genres'. Speech genres usually are representative of certain bodies of knowledge and comprised of multiple discourses. Its multiple dwelling is due to the vast and numerous social relations. As Smith (1998) demonstrates, the social sciences fall victim to this as well. There are

certain discursive manners which bring forth emotions or a reaction only among social scientists. This can also be applied to political discourses.

This theory is important because it recognizes speech genres as embedded within power relations and exclusionary. After all, the aim of discourse is to convince. It is used as a way to bring forth ideas in a logical and interpretative matter. It is not without objective, nor without effect. Words, metaphors, sentence structure, etc. are all tactics adopted in order to induce certain reactions. Counterclaims are a great example of this. As McCammon et al. (2007) argue, the strength of a discourse can be measured with its ability to refute or rebut certain claims. It is within this capacity that certain discourses are more successful than others and why certain discourses remain hegemonic while others do not.

Political Rationality

These discursive relations can also be observed in political arenas (Outshoorn 2004). According to Rose (1999), all governing bodies hold an established discourse, which he refers to as 'political rationality'. He argues that political rationalities hold a:

> distinctive moral form, in that they embody conceptions of the nature and scope of legitimate authority, the distribution of authorities across different zones or spheres—political, military, pedagogic, family and the ideals or principles that should guide the exercise of authority: freedom, justice, equality, responsibility, citizenship, autonomy and the like. (Rose 1999: 26)

It implies that government formulates itself a 'truth' to which it organizes its decision making. In other words, political rationalities allow a justification and logical interpretation for government conduct. This signifies that the system of truth generated by the governing body enables it to formulate new ways and techniques of governance (Rose 1999: 25). In addition, political rationalities depend on 'intellectual technologies'

or 'speech genres' in order to know what to do next. For example, without a political rationality one cannot make sense of what to do next and there is no logical explanation to one's conduct (Rose 1999: 27-8). Political rationalities can be seen as the 'thought' behind the governing.

Furthermore, these differing discourses play a role in how the governance will be organized *vis-à-vis* its citizens (Rose 1999: 41). Using this line of argument, Rose (1999) proceeds by demonstrating that under the rationalities of liberalism the governed subject is viewed as a moral creature and free. By framing the individual as moral, one asserts a self- discipline on behalf of the subject. This presupposition guides the governed relationship between the individual *vis-à-vis* the collective. This signifies that the shift in governance relies on a shift in how the governed are politically objectified.

Rose (1999) follows by explaining that there is no limit as to what has been governed and what can be governed. In other words, the "governed vary over time...and there is no such thing as the governed only multiple objectifications of those over whom government is to be exercised, and whose characteristics government must harness and instrumentalize" (Rose 1999: 40). Under these theoretical frameworks governing must be seen as dialectical and dialogical. How the subjects are governed varies over time and is relative to the social and political context. Just as with discourse, Rose (1999) shows that political rationalities are socially shaped and socially shaping. In addition, political rationalities are a great gateway to understanding how political actors plan to govern.

The discourse chosen also advocates the governing style. Political discourses can close or open doors for new policy measures (Outshoorn 2001; Kantola and Squires 2004). The discourse among policy actors is not unified; rather there are differences and

similarities. This can be used as support that the formation of law is representative of a hegemonic struggle, as described by Fairclough (1993). The above discussion shows that power relations exist within political discourse. It is further argued that power relations exist between orders of discourse and that these can be identified in order to understand the role of discourse. The above theory is well suited for this study since I aim to identify the relations between discursive framings and social policy outcome(s).

Methodology and data

To effectively identify the political rationalities during the enactment of the PRB, I intend to adopt an approach similar to Outshoorn (2004). She argued that the analysis of "a policy debate that has led to some type of state action" (Outshoorn 2004: 14) is needed to comprehend the political power relations between the state and the governed. The political debate becomes the starting point of analysis for two reasons. First, it is the context under which political issues are discussed and secondly, it is where the opportunity for political change resides. It is also within these debates that concerns are discussed. It is for these reasons that political debates are central for this study. Additionally, newspaper archives are used in order to understand the political context of the political debates and the PRB. By using political debates, government documents, newspaper articles, and journal articles, the study will be sensitive to both the political and social environment. Each data set is discussed below.

The final act underwent hours and hours of deliberations and many amendments. For the purpose of this study, I rely on NZ parliamentary political debates discussing the PRB between 2000 and 2003. All-in-all, it took almost three years for the enactment of the PRB. It was introduced in Parliament on September 21th 2000 and finalized on June

25th 2003. Within those three years, the original proposed bill was subjected to three parliamentary readings, many discussions, and two dominant revisions: one from the Justice and Electoral Committee and another from the Committee of the Whole House. The time frame chosen for the study encompasses the complete political process of the PRB, from its proposal in 2000 to its finalization in 2003. The analysis consists of mapping out the textual evolution of the enactment of the PRA in order to determine the competing political rationalities, which were present and dominant during its enactment and reforms, and juxtaposing them to the evolution of the PRB.

Most of the data were readily accessible on-line including the political debates between 2001 and 2003. The rest were available via the *New Zealand Parliamentary Information and International Documents Service*. All of these services are accessible through the NZ Parliament website. Furthermore, the website clearly outlined the legislative process in the making of a law. The whole parliamentary process is summarized and explained with the usage of diagrams, simplifying its understanding. Additionally, the reports and their amendments are also available through the website, making this a rich and free source of data.

The second data set is newspaper articles. The *NZ Herald* website was also a rich source of free data. The *NZ Herald* is a prominent National newspaper covering news from all over NZ. With the aid of its on-line archived newspaper articles, I read over 58 newspaper articles directly and overtly discussing the PRB published between 2001 and 2003. Unfortunately, the on-line archival system did not include the articles published prior to 2001, however, it is evident that the PRB was a central focus for the newspaper between 2001 and 2003 giving me enough information to comprehend the social context

of the PRB. Furthermore, I relied on government documents, found on the Parliamentary website, to describe the politics in NZ surrounding sex work and the PRB.

This study aims to understand the political rationality in NZ between 2000 and 2003. More specifically, it intends to observe the discourse in relation to NZ sex workers. With the use of critical discourse analysis, the focus of the study will be to identify the competing discursive framings during the decriminalisation of the sex industry in NZ. Each discourse brings forth the wanted relationship between the state and sex workers. In other words, the study assumes that the political rationality is guiding each claim and how it is represented and argued.

Ideally, the study would encompass a complete analysis of all eight debates mentioning the PRB, however, time only permits the completion of a portion of the research. The thesis centres on three of the eight political debates relating to the PRB: the readings. The readings are parliamentary sessions which allow members of parliament an opportunity to share their views regarding the proposed bill. These debates are usually formal and organized. For example, the first reading allotted speeches of ten minutes to each political party so they could share their perspective of the PRB. The NZ Parliament depends on these readings to determine whether or not the House should keep considering the bill. At the end of these parliamentary sessions, MPs are expected to cast a vote to determine whether or not the bill should be rejected. To sum up, the readings are organized discussions amongst members of parliament where the aim is to convince work colleagues to either vote for or against the bill. Additionally, the readings are a good starting point for understanding the dynamics between discourse and policy change. It is the freedom of topic in the readings which allows the political rationality to be revealed.

The ability to describe the emergence of a policy is dependent on the use of political debates since it enables the researcher to view the final text and policy from a holistic perspective and in accordance with its metamorphoses.

Similarly, it is through the process of detecting the historical relations between the discursive context and the outcome that one can observe the power relations. Critical discourse analysis advocates the usage of historical evidence to contextualize its discursive changes (Fairclough 1993). The emphasis that text is not ahistorical and independent of its social and political context is fundamental to this theory and methodology and, therefore, this study.

Recall that Fairclough (1993) views discourse and power in terms of hegemony. He further argues that texts must be analyzed in relation to their framing. It is important to situate the analysis of the discourses, within their overall framing. In other words, what was the mandate of the bill? What were its revisions and changes? Which political parties supported which discourse? What was the public reaction to the proposed bill? These questions need to be answered in order to understand the textual context of the political debates. The discussion on discourse must include the overall framing in order to truly understand the source of the discursive tensions identified within the report. The newspaper articles will also help in highlighting the dialectical relation in discourse. It is the discursive process of subsuming and subordinating certain discourses that will be analyzed in this thesis. The organization of discourse is important to study in order to identify the dominant discourse and how it is upheld with the support of certain discursive framings. How does each order of discourse frame their claims? How is the

dominant discourse reinforced? What are the discursive tensions and practices of each order of discourse?

The analysis began with a close read of the three readings in the same order that the House heard them. Afterwards I subdivided the speeches in two groups in order to observe them side by side. The thesis refers to the speeches advocating against the PRB as the 'Opposition' and the speeches advocating in favour of the PRB as the 'Supporters'. Following the analysis of the readings, the amendments to the PRB were examined. As Smith argues (1990), final texts are usually taken-for-granted, in turn neglecting their process. In the case of the PRA, the power relations can be identified in the political debates and its amendments, as well as within the social context.

Conclusion

With the use of academic literature, newspaper articles and government documents, the analysis concentrates on the formation of the PRA and its discursive tactics. Whether decriminalization is an appropriate legal regime to adopt is not the focus of the study, rather it is the power relations that organized the final text. As Smith (1998) argues, ruling relations can be studied through policy debates and the amendments of the text. Additionally, with the use of newspaper articles, the social context is also analyzed in order to comprehend the dialectical nature of discourse. The PRA was enacted in 2003, and led to the decriminalization of sex work in NZ, this outcome allows for a timely and perfect opportunity to study the discursive framings which allowed for this political change. Overall, the study aspires to address one main question: what is the role of discourse in policy formation?

Chapter III - The Role of Law

During the 1970s, the victimless approach was adopted by feminists and policy-makers to advocate for the repeal of homosexual and sex work related laws (Frances 2007). The pro-cannabis movement also adopted a similar discursive framing (Jenness 1993). Greatly influenced by liberal notions of governing, the victimless approach provided a different role for the governing body in relation to its people: it no longer had the right to intervene in the private sphere if no harm was caused to the individual. For example, the role of law was to protect foremost individual rights while maintaining public and moral order. The tension between individual rights and moral order was present among Members of Parliament (MPs).

Even though some MPs expressed discontent towards the *Prostitution Reform Bill* (PRB), they began the debate by describing the role of law. The following chapter discusses how the role of law was framed by the MPs during the PRB debates. Influenced by a moral order perspective, some MPs insisted on the need for the relationship between moral order and criminalization, while others insisted on the opposite: the disassociation of moral order from criminalization, emphasizing individual rights. With the use of excerpts from the Hansard, the analysis begins by identifying how the Opposition and the Supporters of the PRB defined the role of law and ends with a discussion of the differences between the two perspectives and the tensions between the discourses. I contribute a whole chapter to the theme of law since it is important to highlight the public/private dichotomy and how it played a significant role in how MPs described the PRB and its function for New Zealand (NZ).

Criminalization in the name of moral order

The aim of the criminalization discourse is to advocate for the 'containment' of the sex industry, specifically the visible sector. The ability of a decriminalization model to contain the visible industry is questioned by the Opposition. The role of law and moral order was repeatedly brought forth when discussing the PRB and the legitimizing of commercial sex. The relationship between law and moral order was emphasized by the Opposition to the PRB in two ways: first it associated criminalization with moral order and secondly it associated decriminalization with legitimization of the sex industry. These discursive tactics are discussed below.

First, in order to convince others of the need for a punitive approach to the sex industry, the Opposition to the PRB had to directly associate criminalization with moral order. The following excerpt from a member of the Opposition is a great example of this discursive association:

> If prostitution is so bad—I do not hear people saying that it is a worthy occupation—and I am in full agreement with the sponsor on this matter, it would be normal in a democratic, lawful society to express that by making the activity illegal, and to send a message to anyone in our society that this is not the kind of employment we want to see encouraged. But, no, the supporters of this bill want us to believe that by decriminalising prostitution fewer people will be tempted to join the activity, and more will leave. I think that that is absolute rubbish, and that is why I shall oppose this bill. (Baldock February 19th 2003 l. 270-274)

United Future MP Larry Baldock (February 19th 2003) proclaimed that criminal status is important when discussing an act that is deemed to be socially "unhealthy" for the workers, the communities, and the children. The above excerpt is evidence of how the illegality of sex work is deemed to be morally necessary in order to inhibit people from entering the industry. The relationship between morality and law is important for Baldock

because it justifies the sustainment of a quasi-criminalization model. This is clear since he voted against the PRB at the second and third reading.

Another discursive association established by the Opposition is how the debate does not address community concerns relating to the sex industry. NZ Labour MP Ross Robertson (November 8th 2000) viewed it as an injury to society. Robertson asserted that the decriminalization of soliciting would lead to a "situation that people will find embarrassing and not conducive to what they would consider to be good morals or good behaviour" (November 8th 2000 l. 880-882). The bill is a representation of the breakdown of morals and values that are cherished by NZ citizens. The equating of homogeneous morals to civility and citizenry is evident during his speech, specifically when he asserts that "Holding these things dear to us helps people in a civilized world to continue to behave in a proper manner" (Robertson November 8th 2000 l. 889). Open soliciting, according to Robertson, is simply not conducive to the hegemonic norms in NZ making the PRB problematic for society and moral order.

In addition to the association made between criminalization and moral order, the Opposition to the PRB expressed a direct association between the decriminalization of the sex industry and its legitimization. This line of thinking associated decriminalization with its legitimization and in turn an increase in sex work. Opposing MPs argued that the actual presence and legitimization of the sex industry would lead to an increase in people participating and working in the sex industry. An example of this discursive association was made by MP Eric Roy (November 8th 2000 l. 629-635). He expressed concern over the divide between the intention of the bill and actual outcome. According to him, although the bill appears to promote equity and safety, in reality it promotes soliciting

and the normalization of commercial sexual activities (Roy November 8th 2000 l. 632-635). He urges Supporters not to "flossy it up into anything else" (Roy November 8th 2000 l. 635).

Another MP, Peter Brown further argued that the PRB was "about promoting the prostitution industry" (Brown February 19th 2003 l. 429). The bill was accused of creating the social organization needed to insure an influx of young women into the industry (Brown November 8th 2000 l. 586- 590). More specifically, Brown asserted that the proposed bill was about the creation of "market freedom and commercial opportunity for prostitution" (Brown November 8th 2000 l. 607-608).

The fear of the normalization of commercial sex is what inhibited Brown and others from supporting the PRB. As they argued, the PRB is framed as opening doors for the enticement and encouragement of people to enter the sex industry. According to this school of thought, the decriminalization of the sex industry creates more opportunity for women and men to enter the industry, placing society at risk.

Using similar arguments, MPs questioned the need to change the pre-bill system since they cannot conceive the bill assisting workers to exit the industry. The following excerpt exemplifies this perspective:

> There is no doubt in my mind that decriminalisation will be seen by the vast majority of New Zealanders—especially the young people—as a legitimising of it. It will become easier to enter what supporters call "the industry" and it will be harder to leave. (Baldock February 19th 2003 l. 274-276)

Overall, Opposition MPs described the proposed bill as inducing an opposite effect than was predicted. They felt that the PRB would make it easier for people to enter the sex industry while making it harder to exit. Entrapment becomes the outcome.

Opposition MPs also argued that by making the industry more 'attractive', one can predict an increase in competition among workers, brothel-keepers, and 'pimps'. For example, Robertson described this repercussion as stemming from the simplicity of working in the industry: "when one can whip out and sell one's self, in come the new girls. In come the pimps, the business people, and the gangs" (Nov 8th 2000 l. 874-876). In addition, from the NZ National party, Smith expressed concern over the message represented by the PRB. He claimed that the decriminalization of the sex industry would lead to more harm than good because of an increase in sex work. Let's examine the following excerpt:

> The best way that this Parliament can minimise the harm of prostitution is to minimise prostitution—full stop, end of story. A bill that has this Parliament making prostitution a legitimate career choice will mean more prostitutes and more harm. (MP Nick Smith June 25th 2003 l. 210-212)

This school of thought reduces the solution to the criminalization of the sex industry. By equating decriminalization with legitimization, and legitimization with an increase in sex work, NZ National MP Nick Smith also describes the repercussions of decriminalization with an increase of all of the problems associated to it. This discursive association creates and instils fear and doubt in the minds of MPs regarding the aim of the PRB.

All-in-all the above excerpts show that the Opposition argued against the PRB because of its plausible effect on NZ public moral order. By framing the problem as a public morality versus a private morality issue, MPs can still regulate the sex industry while sustaining 'liberal' thinking. Based from the above discussion, I argue that the Opposition had to equate criminalization with moral order and decriminalization with

legitimization in order to justify the maintaining of a punitive approach to the sex industry.

Law as amoral

As a backlash to the above arguments, Supporters of the PRB insisted on the amoral stance of the PRB. The presence of moral discourses among Opposition MPs was felt by the Supporters of the bill and was evident in how they framed the role of law. Two key discursive tactics were used by the Supporters of the PRB. The first tactic consisted of disassociating the PRB from morality and the second was by associating the role of law with the protection of citizens. The following section is devoted to explaining how the Supporters of the PRB described the role of law in relation to sex work.

To begin, in order to differentiate law and morality, the Supporters of the PRB insisted on the promotion of a secular approach to sex work. MP Sue Bradford (November 8th 2000 l. 721-728) reminded the House that religion plays no role in deciding the direction of the legal system. Law should be secular. She used the example of "adultery as a sin" (November 8th 2000 l. 722) to convince the House that by voting against the PRB, MPs are also advocating for a non-secular legal system. Bradford (February 19th 2003) accepts and acknowledges that the issue at hand is a moral one, however, she does not accept that religious morals should guide NZ law. She states:

> - While I accept totally people's right to their belief that, for example, prostitution is a sin, I cannot accept their right to maintain that Christian sin should be a law in 2003 in a country that is not a theocracy and has no state religion. (Bradford February 19th 2003 l. 751-754)

Bradford feels that religion only has the right to guide the legal system if the majority of NZ citizens agree or hold the same beliefs as religious leaders because only then is the outcome the will of the majority.

Additionally, Supporting MPs viewed the role of the state and the legal system as protector and a representation of the people. In stating her position for the PRB, Bradford also emphasizes that "They [organizations and sex workers] want us to decriminalise prostitution now" (February 19th 2003 812-813) and that this, from a liberal democratic perspective, is sufficient and legitimate evidence for the state to take action. It is argued that morality and personal biases should never be the guiding principle in how to govern the people.

Furthermore, other MPs reaffirmed Bradford's position in relation to the role of law by framing their arguments from an individual rights perspective. The key theme among Supporters of the PRB is that the role of the law is to protect individual rights in the face of collective rights, not the opposite. The people can request protection from degrading activities that are harmful to them, however, not from activities that are not harmful towards them *per se*. As ACT NZ MP Penny Webster described:

> It is legitimate to require that activities that are degrading and damaging and that have always caused grave offence in healthy societies can be conducted in a way that keeps the offence to others within reasonable grounds. (November 8th 2000 l. 852-855)

In line with the liberal rhetoric, Webster (November 8th 2000 l. 822) continues by explaining that because we live in a free society, the role of the law is to protect individual choice regardless of whether or not we agree with the choice made. She compares the controlling of sexuality to the controlling of smoking and cage fighting.

Illegality is not determined by the things a few of us do not like, in contrast "In a free society things are lawful even if we do not like them" (Webster November 8th 2000 l. 822).

This line of thinking was further discussed by MP Sue Bradford. Under a liberal perspective, the legal system's function is to protect the state and its citizens. In addition under a democratic approach, the state represents the people. She uses this line of argument to highlight how the state is forgetting their role *vis-à-vis* its constituencies. According to Bradford (February 19th 2003 l. 803-806), it is vital to listen to sex workers and the organizations that work alongside them (the Prostitutes Collective, the AIDS Foundation, the Salvation Army, the Family Planning Association, the Citizens Advice Bureaux, Women's Refuge, and Wellington Independent Rape Crisis) in order to formulate a decision in reference to the proposed bill. She continues by asserting that:

> The people from those groups are those who work with and for prostitutes at grass-roots level. They know what is going on. As lawmakers we often justifiably try to give precedence to the views of those groups that are most intimately connected with any particular piece of legislation, whatever the topic. I think that we should apply that principle here too and give priority to the voices of sex workers themselves, and of those who work most closely with them. (Bradford February 19th 2003 l. 806-809)

According to this view, sex workers deserve protection from the state. Both, Bradford (February 19th 2003) and Chadwick (February 19th 2003 l. 1072-1081) described the role of the law as being a tool to protect the 'people': 'people' including sex workers. Chadwick stated that "they [sex workers] know that the enactment of this bill will lead to a safe industry and allow workers to have a licensed and registered work environment" (February 19th 2003 l. 1075-1077). The proposed legal reform is not only supported and demanded by the majority in the House but by sex workers themselves.

It is evident from the above excerpts that the Supporters of the PRB question the moral stance adopted by the Opposition. Additionally, the Supporters accuse the Opposition of neglecting the view of sex workers. They also remind us that morality has not stopped or abolished sex work, arguing that a punitive approach is inappropriate when dealing with the issue. Based on the discussion, I argue that the Supporters describe the role of law as protecting the citizens, regardless of morals and personal biases, and Supporting MPs include sex workers in their definition of 'citizen'.

Conclusion

Influenced with liberal notions, the role of law began to be defined differently. Moving away from a morality perspective, the liberal notion identified governable and non-governable domains. For example, liberalism highlighted differences between the private and public sphere making it more and more difficult to govern the latter. Law can no longer intervene in sexual practices conducted in private domains if they do not cause harm. According to the liberal discourse, commercial sexual services; if conducted in the private sphere and between consenting adults, cannot be governable.

The above discussion also shows that the Opposition to the PRB relied on the fear of the effects of decriminalization on the public domain to justify the governing of private commercial sex. Even though consenting private sexual acts are no longer governable, MPs emphasized the effects of decriminalization on moral order in order to transcend the barriers placed by the private/public dichotomy. By framing the problem from a moral order perspective, a punitive approach to the sex industry becomes a justifiable and an attractive legal model.

Ironically, Supporters of the PRB also relied on the private/public dichotomy to argue for the removal of the state in commercial sexual activities between consenting adults. Rather than framing the issue from a moral order perspective, MPs framed the issue from an amoral stance to highlight individual rights in face of collective rights. With the aid of the private and public dichotomy, the PRB was presented as a 'commonsensical' and modern approach to organizing the sex industry.

Overall, the private/public dichotomy played a major role in how the role of law was defined by the Opposition and the Supporters of the PRB. The role of law becomes more than the maintaining of moral order, it also becomes the tool to protect individual choice. The above discussion is important for two reasons: first it stresses the different legalistic approaches present among the NZ MPs and how commercial sex remains imbued with morality, and secondly how the introducing of liberal notions became a pivotal discursive moment for the sex workers' rights movement since it opened the door for an amoral discourse to emerge. As much as the private/public dichotomy is used to argue against decriminalization, the same dichotomy allowed sex workers' voices to emerge from the shadows.

Chapter IV- Discursive Framings Opposing the PRB

A punitive approach to the sex industry gained momentum during the end of the nineteenth and twentieth century. By this time most countries had adopted the criminalization mode to deal with the industry (Frances 2007). Between 2000 and 2003, when the debates took place, many Members of Parliament (MPs) demonstrated overt support for the pre-*Prostitution Reform Act* (PRA) model; a punitive approach to the sex industry. Prior to 2003, New Zealand (NZ) had a quasi-criminalization system where the act of sex work was legal but not all of the activities surrounding it. As ancient as the punitive approach to the industry is, this chapter provides a critical and in-depth examination of the political rationale opposing a non-punitive model. With the use of the Hansard of the *Prostitution Reform Bill* (PRB) readings, I highlight the arguments used to justify a criminalization instead of a decriminalization model. Speeches discussed below are by MPs who have directly advocated for either partial or complete criminality and who have opposed the PRB.

This chapter is dedicated to explain and demonstrate how anti-sex work driven speeches relied on four main areas of 'damage': community damage, family unit damage, damage to the young and Maori population, and damage to women and sex workers. Furthermore, this section highlights how the discursive framings were organized and presented by the anti-sex work political actors in NZ Parliament between 2000 and 2003.

Moral Paradigms

Criminality of the sex industry is not a new phenomenon and nor is it decreasing. Most anti-sex work groups support harsher penalties on the people participating in the sex industry and more and more nation-states have chosen to implement harsher penalties for sex work related offences, and/or add criminality to certain aspects of the sex industry

(Weitzer 2008). Therefore, before proceeding to the four areas of damage identified in the PRB readings, it is important to examine the political discourses identified by other research conducted in other countries. Three key discourses have been identified.

Outshoorn (2001) argues that the Netherlands has three types of political discourses: the traditional moral discourse, the sexual domination discourse, and the sex work discourse. Weitzer (2008) also observed the traditional moral discourse in Western Australia. Both described the traditional moral discourse as defining sex work as immoral because of the sexual behaviour it promotes. Based on biblical type arguments, unchaste women are frowned upon. The state becomes the main actor in wanting to minimise participation in the sex industry, whether as a worker or as a client. This discourse advocates for the protection of the 'fallen' women and her exit of the sex industry, while simultaneously punishing the buying and promotion of commercial sex (Outshoorn 2001: 475).

The second discourse identified by Outshoorn (2001)—the sexual domination discourse—is deemed as a 'modernised' version of the traditional moral discourse. This was also argued by Weitzer (2008) when describing the difference between the traditional and modern moral paradigms. As in the traditional moral discourse, the fallen women rhetoric is present in the modern moral paradigm, however, the modern moral discourse no longer aims at changing men alongside the women. Rather it dropped the 'male lust' argument and viewed the past fallen woman as a victim of poverty or inequality. The sexual domination rhetoric permeates the modern moral paradigm, as described by Weitzer (2008). This discourse is strongly supported and maintained by radical feminists (Outshoorn 2001).

The third political discourse identified by Outshoorn (2001) is referred as the sex work discourse. This discourse views sex work as work. It links sex work to self-determination and individual rights. The notion of choice is integrated within the sex work discourse in order to advocate for the legalization or decriminalization of sex work. This discourse is further described in the subsequent chapter (Chapter V). For now, both the traditional and modern moral discourses, as described by Weitzer (2008) and Outshoorn (2001), were present during the PRB readings and are discussed in this chapter.

It is important to discuss the moral discourses present among Opposing MPs since the arguments for the criminalization of the sex industry gained momentum as the readings proceeded. The support for the PRB dropped at every step of the way and more specifically at the third reading where the votes were so close that it was MP Ashraf Choudhary's absence that allowed its enactment. Were it not for him, the PRB would have been defeated since a tie vote means a defeat (Tunnha 2003). The close call shows the potentiality of these discourses and their ability to silence other discourses, such as the sex work discourse.

It is also important to note that the PRB was described by the Opposition as being ineffective and how this became a guiding principle in how MPs voted toward the bill. More specifically, MPs repeatedly and consistently highlighted that the aims of the PRB were out-of-reach or misguided. For example, United Future Party MP Larry Baldock opposed the bill during the second reading for one main reason. He argued that the proposed bill was well-intentioned but misguided. This is what he argued:

> I say at the beginning that the aims of this bill are commendable, and I do not oppose it because of any lack of concern towards prostitutes, or on any moral basis—though my conscience does guide me in this issue, as it is supposed to—but I oppose this bill primarily as a legislator, because I believe that it is bad law and it will not deliver the results that the supporters of this bill promise... I believe, initially, that it may be possible to convince one's conscience that this bill should be supported because of a genuine desire to help those trapped in an awful lifestyle, but I believe that many are beginning to have second thoughts as they realise the implications of this so-called reform bill. (Baldock February 19th 2003 211-213)

According to Baldock, the proposed bill would be ineffective in practice. Other MPs, such as Ross Robertson, Nanaia Mahuta, and Stephen Franks, also expressed concern over the outcome of the enactment of the PRB. Whether negative or positive, predicted outcomes were deemed to be a guiding force behind the MPs decision-making.

The following section presents the feared outcomes by the Opposition. The discussion highlights the arguments brought forth by the Opposition in order to demonstrate the competing moral discourses present during the PRB readings. Based on the association between decriminalization of the sex industry and its normalization, the Opposition accused the PRB of two things: being a disservice to the community and to sex workers. MPs consistently argued that the proposed bill would have the opposite outcome than proclaimed (Brown February 19th 2003). Opposing MPs presented four negative side effects from decriminalizing sex work. Let's examine these claims.

Damaging to the community

As discussed in the previous section (Chapter III), the Opposition defined the role of law as protector of moral order and community concerns. Research shows that the public nuisance discourse has also been prevalent in the politics of sex work as far back

as the 1800s (Outshoorn 2001; Kantola and Squires 2004; Weitzer 2008). Tension between sex workers and other residents has been ongoing with different intensity at different times and places. It remains a constant battle for policy-makers to create a solution that will protect sex workers while protecting the community. The tension was present during the debates surrounding the PRB.

According to Opposing MPs, the PRB does not protect society, it protects sex workers. The tension between the presence of sex work and community concerns is amplified by the Opposition to the PRB for the sustainment of a punitive approach to the sex industry. A great example of this discursive tension was expressed by MP Larry Baldock. He felt that the stigma felt by sex workers was self-induced. For example, Baldock argued that the bill should be titled differently: "This is not a 'Prostitution Reform Bill'; it is a 'Society Reform Bill'" (Baldock February 19th 2003 l. 222). The aim of the bill should be to change society's view toward sex work rather than changing sex workers' view toward society. This line of thinking reduces the problem to sex workers and claims that the stigma is self-induced and permissible. In other words, the problem lies in how sex workers view society; reducing culpability to the individual and neglecting all other social factors that may have led her/him into this line of work. In this scenario, being a sex worker is deemed as improper and disgraceful. Attaching blame to sex workers detaches the community from the responsibility of helping the 'fallen women'. As Baldock (February 19th 2003 l. 222-223) urged, the bill protects the sex worker and not society, making it problematic for social order.

Additionally, other MPs feared that an influx of sex workers was to follow the enactment of the PRB. This is especially the case for MPs such as Eric Roy, Peter Brown,

Larry Baldock, and Nick Smith, who viewed the sex industry as immoral etc. Another fear expressed by the Opposition to the PRB is an increase in advertisement. MP Roy felt anxious in relation to the PRB because he believed that the bill was going to allow the sex industry to advertise anywhere it pleased. The fear of being unable to 'protect' the children from seeing advertisements which support promiscuity and sexual liberation was strong among the Opposition.

It is evident that the Opposition to the PRB were worried about the outcome of the bill. More specifically the MPs expressed great fear of an increase in the visibility of the sex industry through street soliciting and advertising. These discursive framings focussed on speculations about the visible side effects to convince others that the decriminalization of sex work could lead to social decay. The fear of an increase in street work and visibility of the sex industry was the leading problem for Opposing MPs.

Damaging to the family unit

A second key argument presented by the Opposing MPs relates to the damage by the presence of the sex industry for the family unit. Rather than restricting the negative effects of the visibility of the sex industry onto the community at large, the MPs also directly associated the presence of commercial sex to the destruction of the family unit. In addition to public nuisances, the private sphere of non-sex workers is threatened by the sex industry.

MP Ross Robertson expressed unease toward the bill because of its potential effect on the family unit (November 8th 2000). He viewed his political role as being the protector of the family and the people in his electorate (Auckland). He described himself and his political duty as follows:

> As a family man I personally feel the calling very strongly. Furthermore, Manukau East is one of the youngest electorates in this country. Anything I can do to improve the integrity of families and the quality of my electorate. I will do gladly. (Robertson November 8th 2000 l. 775-779)

Robertson claimed that the family unit should be central in how the state governs. He equated the family unit with social stability and integrity. Furthermore, he argued that safeguarding the family unit was also safeguarding the social fabric of NZ. This line of thinking equates the family unit with social stability. It also assigns the state the role of protecting this institution for social order (Robertson November 8th 2000 l. 625-628).

In a similar vein, Roy utilized the notion of the destruction of the family unit to express two points. First he urged MPs to remember the role of family when making political decisions. He recalled that history shows that all MPs have at one point or another relied on the family unit as a guiding force for future political decisions. Secondly, Roy urged all MPs to question whether or not the PRB held the interest of the family (November 8th 2000 l. 699). This is a case in which the family unit should have precedence (Robertson; Roy November 8th 2000 l. 802-806). This discursive framing considers protecting the family unit more important than protecting sex workers. According to Roy and Robertson, the PRB was not good enough for the people since it may be damaging for the family unit and social stability.

Damaging to the young and the vulnerable

A third damaging side effect described by the Opposing MPs is on the young and the Maori population. By associating decriminalization with an increase in youth prostitutes, the sex-work discourse is undermined. Alexandra Dobrowolsky and Jane Jenson (2004) argue that the trend in Canadian political discourses, when addressing

women issues, has been to increasingly undermine the rights of adult women with the rights and needs of children (155). This is also evident in the NZ political discourses. Within the feminists' debate surrounding sex work, the traditional and modern moral discourses can be accused of using this discursive practice to undermine pro-right feminism. Let's examine how this was manifested in the NZ context.

MP Brown (February 19th 2003 l. 430-432) is a great example of this discursive framing. He accused the PRB of being a disservice to young people since it made it more appealing to be a sex worker. He further claimed that the decriminalization of sex work would make the act an 'attractive' profession. He assumed that the bill would glorify the work encouraging young innocent people into believing that sex work is gratifying or a socially respectful form of labour. He speculated that the PRB would make 'young workers' more vulnerable to the sex industry. For example:

> A young university student struggling with finances will become more vulnerable. After all, we are talking in this bill of not just decriminalising individual prostitutes and their activities, but of allowing pimping. So a man or woman can seek out a young, attractive woman, and encourage, persuade, and lure her to allow that man or woman to pimp on her life and have the opportunity to make money out of selling her body. It is a matter of the innocence, purity, health, and future of such young people. I mean young people, because if this law manages to keep the age limit at 18 years, that age is still so young to be enduring the horrors of prostitution as a lifestyle. (Baldock February 19th 2003 l. 276-286)

Baldock reminded the House how child prostitution is a current issue and that there are already measures in place prohibiting the use of children in prostitution. The proposed bill proclaims being able to 'better' protect the children than the previous system but does not make clear how it would do this. However, Baldock capitalizes on adjectives such as 'innocence', 'purity', 'health', and the 'future of such young people' to

ignite a deepened fear of child prostitution once the PRB is enacted. This tactic reduces the sex industry to child prostitution and abuse, where the rights of adult sex workers are overshadowed.

A second discursive tactic adopted by Brown (November 8th 2000) is in highlighting the vulnerability of the Native population to the sex industry. He was the first speaker to address the issue of race in the NZ sex industry. He approached the issue by asserting that "The ship-girls [sex workers at the ports] are mostly young Maori women" (Brown November 8th 2000 l. 563). The above excerpt successfully brings together two adjectives: 'young' and 'Maori'. This marriage of words highlights the double stigmatization of this group and how decriminalization would increase their vulnerability to the sex industry. The use of both adjectives makes it more difficult for the listener to disregard his claim and to take in consideration consenting adult sex work.

Additionally, Brown (November 8th 2000 l. 600-604) went on to describe one particular experience he had with a sex worker as being 'disturbing and confusing'. The example given is of a young Maori woman who pleaded with the security officer at the port gate to let her enter the premise so that she could sell her sexual services. Brown described the young Maori woman as being "too smartly dressed for that sort of occupation" but that "she needed the money" (November 8th 2000 l. 604-606). Upon refusal, the woman retreated to her car, where Brown saw children sitting and waiting for her. From speaking to them, Brown learned that the mother had to bring her children to work and leave them in the care of the other workers "whilst mum does the business" (Brown November 8th 2000 l. 565). This reality is disturbing to him and other MPs.

The use of 'young' and 'Maori' as key adjectives ignites images of vulnerability and corruption. The will to protect the young and the vulnerable from the sex industry permits the Opposition to the PRB to disregard decriminalization as a suitable model since it gives precedence to the rights of children and to the Maori population instead of to the rights of other sex workers. It creates a hierarchy between adult sex workers and child prostitution, placing the innocence of these populations at the forefront which in turn neglects the needs and rights of adult sex workers.

Damaging to women and sex workers

Up to now, the Opposition to the PRB have accused the sex industry of damaging NZ social fabric and stability, and of damaging the young and the Maori population. An additional harm associated with the sex industry is linked to women at large. From a radical feminist perspective, Opposing MPs framed the sex industry as hindering all rights of women. For example, MP Dianne Yates affirmed that sex workers and women were better off not legitimizing the sex industry since it devalued women in general (February 19th 2003 l. 439-441). Similar to the sexual domination discourse, as described by Weitzer (2008) and Outshoorn (2001), MPs relied on gender inequalities as the nucleus of their argument.

According to radical feminists, no commercial sex can be conducted under equal gender relations justifying for the advocating of its abolishment. This position is further emphasized when Yates affirms that men hold a different view, based on their own interests, *vis-à-vis* the PRB (February 19th 2003 l. 454-455). According to Yates, a women's body is deemed by men as saleable until asked whether they thought "it would be a good idea for their wife, daughter, sister, or son to become a prostitute, they said oh

no" (Yates February 19th 2003 l. 454-455). The words 'a good idea' asserts that they would want to encourage or promote sex work as a form of work for their loved ones. This argument assumes that sex workers are encouraged and supported by family members when entering the sex industry. Evidently, it may occur, however, to claim it as the norm is extreme. It is a naive and a heterogeneous depiction of the sex work population.

Another example of the sexual domination rhetoric can be found in the speech given by MP Nanaia Mahuta. She also spoke about the issue using a radical feminist perspective. In the second reading, she professed that she wanted to be part of a pro-women Parliament and that she was disappointed that this was not the case. She argued that the proposed bill was not a pro-women bill and therefore should not be supported. For example, let's examine the following excerpt:

> I want to be part of a Parliament that says there are values in our society that all cultures and all nationalities uphold, to ensure the rights of women will be protected every step of the way. (Mahuta February 19th 2003 l. 900-902)

Commercial sex is a women's issue and should be treated as such. It is evident that Mahuta clumps sex workers and women in the same basket (February 19th 2003).

Another argument, largely supported by radical feminists, is that commercial sex is commercial rape. MP Judith Collins repeatedly emphasized the psychological harm associated with practicing commercial sex during her speech. She overtly stated that "In my opinion, prostitution is rape accompanied by payment— if the prostitute is lucky" (Collins February 19th 2003 l. 923-925). It is the act itself that is harmful for sex workers, therefore, to allow or promote the act is to promote sexual abuse toward women.

She further compared this experience with that of a rape victim. She described it as follows:

> If anyone in this Parliament has ever dealt with rape victims, as I have, that is a similar tale—the disassociation of the mind from the body and the focusing on not being there because it is all over now. That is what we are talking about. (Collins February 19th 2003 l. 945-947)

Collins adopted a radical feminist approach to argue that decriminalization is ineffective because it would not reduce the psychological harm associated with the selling of sexual services. In contrast to other speakers, she linked the problems with the sex industry to the act itself. According to this view, decriminalization also decriminalizes commercial rape. Rather than criticizing the activities or problems surrounding the sex industry, Collins makes a direct association between rape and commercial sex, thus making the commercial sex act the target for scrutiny and problematization.

If one follows this line of argument, the solution does not lie in the organization of the sex industry, nor does it lie in the stigma, etc., it is the act itself that becomes the target. It reduced the solution to criminalization and abolition. As a lawyer, Collins had many dealings with people with sex work related convictions. Based on this experience, she urged other MPs to view the issue from a radical feminist perspective.

In addition to the PRB being a disservice to all women, it was also framed as a disservice to sex workers. According to Mahuta, MPs should question the effectiveness of the PRB in increasing the safety and rights of sex workers (February 19th 2003). The PRB was described by MPs Mahuta, Stephen Franks, and Yates, as protecting other groups of people rather than sex workers themselves. For example, the PRB was accused

of protecting brothel owners or keepers, 'pimps', and clients in turn increasing the safety risks for sex workers.

For starters, Franks described the pre-bill industry as 'relatively clean' because of the Massage Parlour Act (Franks February 19th 2003 l. 611-617). Franks argued that the Act was never intended to keep "prostitution relatively clean, but that has been the practical effect" (l. 621-622). This line of thinking leads one to envision one outcome; the repeal of the Massage Parlour Act would lead to the development of a 'dirty' industry: the introduction of trafficking, drug abuse, gangs, and the control of the industry by criminals. Franks assumed that NZ sex industry was free of these activities before 2003 because of its criminal status, however, evidence published after the debates claim that there was no evidence of a 'dirty' industry prior to 2003 and there still remains no evidence of its presence (Abel et al. 2007).

In support of the Massage Parlour Act, Franks reminded the House that sex work per se has been legal in NZ for over a century (Franks February 19th 2003 l. 635). The Massage Parlour Act is not a threat for sex workers; on the contrary, it exhibits a legal threat for brothel-keepers and 'pimps'. These laws are deemed as inhibiting the exploitation of sex workers from brothel keepers and 'pimps'. He asserted that the safety of sex workers would be at higher risk if the PRB repealed the Massage Parlour Act:

> Yet somehow I am supposed to believe that removing the only sanctions or threats to the brothel keepers and the pimps will bring nirvana and a world of women and young men free of coercion. (Franks February 19th 2003 l. 636- 638)

Furthermore, Franks accused the PRB as being utopian since it promoted free-lance sex work. He focused on the PRB's deliberate bias in promoting small worker cooperatives

rather than brothels per se. As is defined in the PRA, a small owner-operated brothel is a brothel that consists of a maximum of four sex workers where each of the workers retains complete control over their earnings. Sex workers at a small owner-operated brothel are not considered operators of a brothel since they work as a group and the earnings remain separate (PRA 2003 p. 5). Even though the encouragement of small owner-operated brothels is to allow free-lance street workers the opportunity to work indoors with companions, Franks accuses the PRB of being utopian regarding the outcome of the bill and that the decriminalization of the sex industry would only lead to a re-location of the sex industry to the streets further endangering sex workers. According to this line of thinking, the PRB does not protect sex workers but rather brothels owners/ keepers and 'pimps'.

In addition to protecting brothel keepers and 'pimps', the PRB is also accused of protecting clients (Yates February 19th 2003 l. 470-472). The example presented by Yates claims that the bill is misleading in its objectives when it asserts that this legislation is supposed to protect the health of sex workers. She questions how the bill will address work related injuries such as the transmitting of HIV. There is no work protection if the worker is put out of business once he/she is HIV positive. The PRB is described as protecting the interest of the clients more than the interest of the workers since the client would not be similarly affected if he/she contacts the virus.

Overall, the PRB is accused of protecting everyone else but the sex worker. The removal of sex work related laws is equated with a disservice for sex workers. It does not acknowledge that criminality hinders the ability for sex workers to seek safety and protection from the state. Under a quasi-criminalized system, some sex workers depend

on the visibility of the public work space for added safety measures. It is easier to create buddy systems when working in the public realm since the public space allows for the denial of knowing each other if faced with criminality. It also allows for sex workers to affirm their friendship when faced with an abusive client. The Opposing MPs are correct in affirming that safety is crucial for sex workers but they are false in asserting that a punitive model can protect them.

Conclusion

Even though 'the Prostitute' has been depicted as either a victim or a sexual deviant and a spreader of disease since the 1700s, the above section is evidence of how the politics of sex work still remain filled with moral values and a sexual double standard. Traditional and modern moral discourses largely guided the NZ political debates surrounding sex work between 2000 and 2003. MPs wishing to advocate for a non-decriminalized industry leaned heavily on the presence of moral values when discussing commercial sex.

Based on fears of the effects if the industry became normalized, MPs voted against the PRB because of the predicted outcomes on the safety and protection of the workers and the community. According to the Opposition, the enactment of the PRB would harm the vulnerable people working in the industry such as sex workers, while protecting the strong such as the brothel owners/keepers, the 'pimps', and the clients. Furthermore, the PRB is accused of neglecting the needs of the community by placing a threat on the family unit, and by placing at risk the young, the Maori people, and women in general. Based on these arguments, and discursive framings, it becomes evident which legal stance the Opposing MPs adopted or sustained in the name of the community, the

young, the Maori, the women, and sex workers. The solution was consistently reduced to a punitive model by equating the act to immorality or/and rape.

Furthermore, in line with a radical feminist perspective, the adoption of the Swedish legal model was seen by certain MPs such as Yates and Brown as an ideal alternative to decriminalization. Yates (February 19th 2003) claimed that the solution to the anomalies and double standards in the current legal regime is not a 'sex work as work' approach but rather a 'supply-demand approach' (Yates February 19th 2003 l. 479-480). The suggestion to criminalize the client and not the worker assumes that by limiting or punishing the demand, the need for its supply will also decrease. Yates calls this approach "caveat emptor" (February 19th 2003 l. 481) since it cautions the client versus the worker. As convincing as such an approach may seem, it is misleading since a two-tier system occurs due to the limited number of permits issued, etc. and arrests of clients are close to zero without the cooperation of the workers, which rarely happens. Even more so, a supply-demand approach depends on a punitive approach to the organization of the sex industry which causes more harm than good for the people working in the sex industry, especially sex workers, since it remains in no one's interest to have the clientele arrested.

Chapter V- Discursive Framings Supporting the PRB

The sex workers' rights movement has gained momentum ever since its birth in 1973. Call Off Your Old Tired Ethics (COYOTE), the first formal organization formed by and for sex workers, became the pioneer behind international legal and social changes surrounding the politics of sex work (Jenness 1993). Following COYOTE's legitimization of the sex work as work discourse, other nations (UK, Australia, Canada, and New Zealand) began adopting this discourse to advocate for the repeal of sex work related laws or the decriminalization of sex work. In New Zealand (NZ), the sex work discourse was formalized and legitimized in 1988 through the New Zealand Prostitutes Collective (NZPC) (Jordan 2005). Created by sex workers and funded by the Ministry of Health; from a public health perspective, the aim of the NZPC was to promote and create a safe-sex industry.

It was with the help of the NZPC and key political actors, such as Members of Parliament (MPs) Tim Barnett, Katherine O'Regan, Georgina Beyer, and Maurice Williamson, that the *Prostitution Reform Bill* (PRB) was introduced to the NZ Parliament in 2000. Based on the sex work discourse, the PRB encouraged and sponsored a decriminalization framework surrounding the organization of the sex industry. This section of the thesis outlines the discursive framings present among the Supporters of the PRB.

In contrast to the claims identified by Opposing MPs (Chapter IV), Supporting MPs emphasised the benefits to the community and sex workers from decriminalizing sex work. The Opposition to the PRB rejected the bill because of the predicted outcomes—that decriminalization would lead to an influx of sex workers and an increase in public

nuisances—while Supporting MPs highlighted the gain for all from this policy change. The most prevalent discourses adopted by the Supporters of the PRB were a public health and a sex workers' right perspective.

The following section critically examines the arguments presented by the Supporters of the PRB. More specifically, this section of the thesis will demonstrate the discursive framings used by the Supporters can be categorized as reactionary when examined in relation to the discursive framings of the Opposition. The section begins by explaining 'decriminalization' and how its promoters discussed the benefits of such a legal model. The Supporters highlighted the positive effects it can have on public health and the private health of sex workers and non-sex workers. Additionally, the MPs addressed the benefits decriminalization can induce on the relations between sex workers and authorities, such as the police. All of the discursive framings used by the Supporting MPs are discussed below.

What is decriminalization?

The decriminalization of the sex industry is commonly defined as the repealing of sex work related laws in order to subject the sex industry to the same laws and controls that regulate other businesses. From the sex work perspective, sex work related laws are redundant and unnecessary for controlling the sex industry and other problems associated with it, such as public nuisances, addiction, HIV/AIDS, exploitation, abuse, etc.. These public nuisances can be dealt with by other laws found in other Acts. Additionally, MP Georgina Beyer further explained how decriminalization would aid sex workers at the micro level regarding relations with non sex workers such as clients, managers, residents,

police officers, etc., and at the macro-level with regard to labour laws and health and safety regulations.

Another MP, Tim Barnett, further described the purpose of the bill as four-fold (October 11th 2000 l. 81-87). First, the PRB aims at formulating a framework promoting human rights and the protection of sex workers. Second, it ensures that the sex industry is subjected to welfare, employment, and occupational health and safety regulations which, in turn, ensure that sex workers are treated as any other service-sector worker since they will gain equal access to the same legal and health resources. Third, it allows for the flourishing of a healthier working environment for sex workers, and finally, the proposed bill aims at protecting children from entering the sex industry, acknowledging that these activities should only be conducted between consenting adults.

Supporters of the PRB repeatedly reminded Parliament that a quasi-criminalization model is problematic and irresponsible governing. Beyer expressed urgency in supporting the PRB because of the problems and contradictions with the pre-bill regime. She chose to emphasize how irresponsible it is of MPs to vote against the bill. Beyer argued that it was "unfair to stall the entry of this bill in order to wait for the others—it may take years before we get it in Parliament" (Beyer February 19th 2003 l. 511-514).

The urgency to change the pre-bill system was also expressed by other MPs. For example, MP Barnett reminded the House that the pre-bill regime stops the state from helping the victims of exploitation and coercion (February 19th 2003 l. 159-163). He used this argument as a way to instill shame in all MPs voting against the PRB. The following excerpt exemplifies this discursive tactic:

> Vote against this bill tonight, and the current victims of prostitution, the workers being coerced, those needing the protection of our general workplace laws, those seeking for a way out of the industry, will wait another generation for fair law. Their future is in member's hands. (Barnett February 19th 2003 l. 160-163)

This statement depicts the pre-bill regime as supporting the exploitation and coercion of people working in the sex industry and of denying them state protection. Even if the PRB is imperfect, it remains a good start (Williamson October 11th 2000 l. 201-209). Some expressed doubt in the PRB but admitted that it remained better than a quasi-criminalized model.

Sex workers are the most vulnerable

Another important point of discussion is how the PRB will affect the clients and the other people working in the industry. The ignorance of the clients was clearly outlined during Gordon's speech (October 11th 2000 l. 254- 261). The role of clients within the commercial sexual transaction was used as a way to demonstrate the inequalities and the scapegoating of sex workers. The point, addressed by Gordon (October 11th 2000 l. 254-261), is how clients face different risks than workers. The difference lies in the legal risks faced by sex workers and clients.

The legal risks towards the clients, in comparison to workers, are nil. The pre-bill regime outlawed soliciting for the purpose of selling sexual services and not soliciting for the purpose of buying. Clients remain protected by the state while sex workers are incriminated. Additionally, the fear of being arrested increases the safety risks for sex workers. The legal system obliges sex workers to conduct quick screenings of potential clients increasing the risk of abuse and danger. Sex workers, when at work, are exposed to different risks than clients making them more vulnerable than the consumer.

Furthermore, MP Tolley (November 8th 2000 l. 358-371) expressed similar sentiments towards brothel keepers. The contradiction of the pre-bill system allows for the victimization of female sex workers while protecting the clients and the business owners. She argued that a punitive regime attributes more control over the working environment to the employers instead of the workers. Employers can oblige sex workers to sign a contract stating that the selling of sexual services is prohibited and at their own risk retracting the responsibility of brothel keepers and management from ensuring a safe sex industry. The point of the contract is to shift the legal liability and responsibility to the worker versus the employer demonstrating the legal inequality between the workers and the employers (Tolley November 8th 2000 l. 363- 365).

Quasi-criminalization, as reflected in the pre-bill system, is accused of creating victims and protecting the perpetrators whereas the PRB aims at fostering the opposite. The sex industry does not only comprise sex workers neglecting the culture of sex work and other participants such as clients and management. This is often neglected in debates relating to the sex industry (Weitzer 2007). Reducing every issue to the sex worker neglects the responsibility of clients and other people working in the industry in ensuring that all are safe while practicing and seeking sexual services. Implicating other parties in the discussions surrounding sex work is central to healing and bettering the relations between sex workers, other people working in the industry, clients, police officers and non sex workers.

No increase in sex work

As argued in Chapter IV, the Opposition to the PRB feared there would be an increase in street sex work and active sex workers. Accordingly, Supporters of the bill

refuted this prediction. MPs Sue Bradford and Tim Barnett argued the opposite and asserted that it was impossible to predict an increase in sex workers following its decriminalization.

MP Bradford claimed that it was "foolish" to believe that the bill would lead to an influx of sex workers because of the social setting (November 8th 2000 l. 748- 752). She reminded the House that even if the legal setting changed, the social stigma would be enough to deter people from entering the sex industry. Additionally, Supporter MP Barnett also refuted the claim by reminding the House that "No provision(s) in this bill increase sexual libido or put money in the pockets of potential clients" (Barnett November 8th 2000 l. 940-944).

Opposing MPs also feared the bill would allow an increase in visible advertisement for the purpose of sex work. However, Supporter MP Barnett reminded the House to look at the classifieds in the *Evening Post* (NZ Newspaper) to see how individuals can already advertise for the selling of sexual services. Since the sex industry is already using the classifieds as a way to promote their services, the reminder is to clarify that the fear of an increase in advertisement is exaggerated.

MP Barnett also mentioned another fear associated with the enactment of the proposed bill: that decriminalization would allow the entry of organized crime into the sex industry (November 8th 2000 l. 940-944). Barnett claimed that organized crime is already involved in the sex industry and that historically a punitive approach has not decreased its presence.

The fear of an increase in sex work and its nuisances following its decriminalization was capitalized by Opposing MPs to argue against the PRB. Whether

the fears expressed stem from genuine concern, recent data show that they were unrealistic. Based on a comparison between before and after the enactment of the PRB, Abel et al. (2007) found no increase in sex workers, advertisements or organized crime thus providing evidence that the expressed fears were not rooted in fact.

Safe-sex industry

Another important discursive framing identified among the Supporters of the PRB was the public health perspective. The public health perspective was used to highlight the community benefits from decriminalizing sex work. In order to encourage community support, Supporting MPs such as Anne Tolley, Tim Barnett, Steve Chadwick, and Maurice Williamson, all emphasized the link between a safe-sex industry and public health. This was achieved by demonstrating how a punitive approach was useless in combating the spread of STIs and HIV/AIDS. Furthermore, the Supporting MPs also argued that decriminalization would place responsibility on clients and brothel management for safe-sex practices. These discursive framings are discussed in detail below.

MPs Tim Barnett, Steve Chadwick, and Anne Tolley approached the issue primarily from a health perspective (February 19th 2003). They mentioned how the pre-bill regime was inadequate in ensuring a safe-sex industry because safe-sex materials were used as evidence. As recently as December 2002, NZ authorities have used safe sex material as evidence of brothel keeping showing the risks associated with allowing the entry of safe sex material in the establishment. Brothel-keepers were unable to promote safe-sex practices or supply safe sex materials, such as condoms, or/and dental dams for fear of being accused of owning a brothel (Jordan 2005). Sex work related laws prohibit

the exchanging of safe-sex literature and materials between sex workers and clients or between management and workers. Others, such as Williamson and Tolley, also adopted this example to argue the importance of promoting or ensuring safe-sex practices between sex workers and their clients. The pre-bill legislation focussed on convicting the offering of sexual services for financial gain; criminalizing the worker and their sexual practices, while ignoring the offering of money for sexual services, neglecting the clients and their practices. MP Tolley and Barnett reminded the House that safe sex practices should also be the responsibility of clients.

Additionally sex work related laws also restrict accessibility to the sex industry by local health authorities. The criminality surrounding the sex industry makes it a challenge for service providers to enter and come in contact with the workers and people participating in the industry. This argument was also supported by MP Chadwick (February 19th 2003). She agreed that the decriminalization of the sex industry would increase service providers' accessibility to those at risk. The legal status of sex work greatly impacts the relations between sex workers and service providers adding another challenge to attaining a safe sex industry under a criminalized system.

In response to the claim that mandatory testing of sex workers should suffice in creating a safe sex industry, MP Barnett argued that mandatory testing would disempower workers, while empowering clients (November 8th 2000 l. 945-949). It empowers the clientele since they remain irresponsible for safe sex practices. Additionally, it creates a false sense of security. The guarantee a worker is not infected encourages requests for unsafe sex practices by clients. The fear of contracting an STI or HIV/AIDS ensures the use of safe sex materials by all participants in commercial sex.

Overall, the health benefits outlined above were a major reason why many MPs showed support for the bill. It was argued that the PRB would ensure that all participants in commercial sex become responsible for creating a safe sex industry. In addition to the sex workers, the operators and clients also become responsible for the use of condoms and dental dams when selling or buying sexual services. Management becomes responsible for the distribution and availability of safe-sex materials while the worker and the client become responsible for their usage. With respect to whether the PRB can prevent the spreading of STIs and HIV/AIDS, MP Tolley reminds us that the problem cannot be reduced to the sex industry. There are other factors that contribute to the spreading of sexual infections and viruses beyond the sex industry (Tolley November 8th 2000 l. 398-399). Nevertheless, removing all barriers from attaining a safe sex industry is a first step in protecting public health.

Safety of sex workers

In addition to the community benefits under a decriminalized regime, Supporting MPs also emphasized the benefits for sex workers. More specifically, MPs such as Georgina Beyer, Maurice Williamson, and Liz Gordon argued that the relationship between the police and sex workers would improve. They claimed that under a punitive approach, the relationship between the police and sex workers is embedded with stigma and unequal power relations hindering the safety of sex workers. For example, MP Barnett (February 19th 2003 l. 84-90) reminded the House how the relations between sex workers and the police can be confusing under a punitive regime. He recalled how the number of arrests relating to sex work related offences is dependent on political pressure. Due to the fact that the number of arrests is not constant, Barnett argued that the law is subject to police discretion (February 19th 2003 l. 84-90). This shows that the pre-bill

laws were not effective in so much as they were used to benefit the police officer versus the sex worker. The relationship between police officers and sex workers demonstrates how the law is used to the discretion of the state versus a tool of law and order.

Opposing MPs suggested that sex workers be obliged to register with the local authority in order to better ensure adequate protection. Supporting MPs refuted this suggestion. For example, Gordon (October 11th 2000 l. 265-270) proclaimed that this approach was problematic because of confidentiality issues and because of the stigma against sex workers. The anxieties were in relation to who would have access to the list. Would local newspapers have access to the registry for the purpose of advertisement? How about health authorities? In general, the aim of the registry would be to keep track of the number of practicing sex workers, however, nothing guarantees that access to the list would not extend past police officers. In the long run, the registry could be a disservice for sex workers, further placing them at risk of violence and harassment.

Gordon also argued that the problem with the presence of a registered list of practicing sex workers is that registered workers would always be associated with their past. Thus in contrast to its aim, the registry may permit and sustain the stigma toward sex workers. As the saying goes 'once a sex worker always a sex worker' since the workers are never taken off of the registry (Gordon October 11th 2000 l. 270).

Beyer (November 8th 2000 l. 480- 489) discussed other dynamics between the police and sex workers. She referenced a personal experience and how the police arrested her while being with a potential client. She emphasized the fact that the police terminated a consensual meeting and transaction. Beyer described the experience as follows:

> I can tell from members that from my brief encounter with this person he seemed to be an ordinary, hard-working, heterosexual New Zealander who had decided he needed a little relief, and I was able to provide that. (November 8th 2000 l. 485-487)

Based on the above experience, Beyer highlights the consensual and innocent nature of the transaction to question the role of sex work related laws regarding the protection of sex workers. It is evident the Supporters of the PRB do not believe the laws were put in place to protect sex workers. The enforcement of the laws is at the discretion of the police showing that the laws are not in place to protect sex workers and/or the community, but rather to satisfy the political image of the time. The above mentioned MPs suggested that sex work related laws are contradictory in theory and practice and, in turn, harm sex workers.

The Supporters of the PRB argued that a punitive approach to the sex industry is a disservice to the community and sex workers. The community becomes victim since it inhibits the formation of a safe sex industry and sex workers become victim because the laws hinder the development of equal relations between them and non-sex workers. As mentioned above, the pre-bill regime is contradictory, placing both the community and sex workers at a higher risk of infections and viruses, and of unfair treatment.

Human and worker rights for sex workers

In relation to the protection of sex workers, Supporting MPs outlined another obstacle that would be created by sustaining a punitive approach towards the industry. Sex work related laws prevent full recognition and attribution of social, political, and civil rights to sex workers. More specifically, the laws hinder the advancement and recognition of the human and worker rights of sex workers. Supporting MPs relied on the

following discursive framing to argue in favour of the PRB because it aimed at improving the human and worker rights of sex workers.

For starters, MP Lynne Pillay (February 19th 2003) attributed her support of the bill to her personal identity and experience of being a woman, a former unionist representing workers, and a mother. Based on these three perspectives, she demands equity for sex workers and acknowledgement of their humanism. Pillay describes certain views of sex workers as being reductionist. In other words, she urges MPs to view sex workers as people too. Let's examine her statement: "These people work in a profession that is not highly regarded, but as people I have tremendous respect for them" (February 19th 2003 l. 642-643). By separating the work from their personal identity, she attempts to demystify the mainstream perception of sex workers. Additionally, she attempts to attribute humanistic qualities to sex workers, highlighting their right to 'human rights'.

Even though the goal of equal rights for everyone, including sex workers, is influenced by her anxieties relating to women and worker issues, Pillay (February 19th 2003 l. 658-660) also utilized the 'freedom of choice' approach. Her experience surrounding motherhood and womanhood is relevant and obvious in how she described her support for the bill. For example, she attributes her support of the bill to the right for everyone to be safe and secure in all choices they make and in all work settings. This is also transposed to the rights of her children having safe and secure work environments, regardless of the profession they are in. Let's examine this statement:

> Prostitution would not be the occupation of choice for my children, but neither would selling tobacco, and neither, quite frankly, would be sitting in the Opposition benches. However, given that my children have that choice, I would want them to be

> safe and secure and to have the best life possible in that choice.
> (Pillay February 19th 2003 l. 658-662)

Similarly to Pillay, MP Katherine Rich also claimed that she supported the bill for a number of reasons but more specifically because of its emphasis on human rights and equity, as well as in reducing exploitation (February 19th 2003 l.174-182). The argument brought forth by Rich is that the state needs to ensure equal rights to all citizens, regardless of their participation in sex work related activities. She mentioned how if her daughter were to enter the industry, she would like to know that her daughter was working in the safest sex industry possible and that the laws applied to all parties involved, including the client. She specifically declared that she does not condone sex work, however, she "would want to know that, as far as possible, the industry was as safe as it could be and above board" (Rich February 19th 2003 l. 192-194). Her aim is to treat everyone equally, despite the fact that some may be sex workers.

Due to the vulnerability of sex workers under the previous regime, MP Tolley felt that they suffered from arbitrary and unfair working conditions such as hefty fines and bonds (November 8th 2000 l. 384). She described this power relation as "Withholding payments for minor reasons" (November 8th 2000 l. 386-387). Furthermore, "The bill also recognises that sex workers are people—that they are real human beings who have the right to say no, and it is their right to have that taken seriously" (Tolley November 8th 2000 l. 390-392). The PRB challenges the pre-bill system by allotting human and worker rights to sex workers and their bodies. Tolley referred to the bill as representing a basic right that every person should have regardless of their profession (November 8th 2000 l. 393). This highlights the human rights of sex workers.

This line of argument was also supported by MP Beyer (November 8th 2000 l. 457). When she focused on the power inequalities between the worker and the operator of the establishment, she confirmed the injustices relating to the working conditions in three areas. First, she highlighted the wage discrepancy between the amount of time worked and the weekly salary. Secondly, she mentioned that the prices for the transactions were controlled by the brothel-keepers showing the lack of agency by the actual workers and finally, that most employers demanded a rental fee or some sharing of the earned money from the sexual encounters (Beyer November 8th 2000 l. 473). Regardless of the added costs of working in an establishment and the loss of agency, Beyer pointed out that the security aspect of working indoors was worth it (Beyer November 8th 2000 l. 476- 479). Under the pre-bill regime, workers have little recourse in case of abuse and hold little agency in reference to their work making sex work more dangerous and legally unprotected.

Interestingly, MP Sue Bradford (February 19th 2003 l. 799-801) urged all MPs who have a union consciousness to support the bill. She asserted that unionism can be a useful mechanism for sex workers to gain agency within the work environment. For example, Bradford explained:

> This bill is a worker's issue too, as my colleague Lynne Pillay has so eloquently pointed out. I hope that people with union consciousness will see the sense in making that particular work environment one in which employees will have much more power to organise, if this bill goes through. (Bradford February 19th 2003 l. 797-801)

The approach taken by Bradford shows that under the pre-bill system, power relations exist between parties in the sex industry. Worker-employer and worker-client

relations are imbued with unequal power relations. According to the workers' rights perspective, sex workers have little control over their working environments. The aim of this discourse is the attribution of agency to the workers in the sex industry, specifically sex workers. The need for the recognition of human and sex worker rights is the nucleus of this discourse.

A service to all sex workers

The politics of sex work creates cleavages among feminists. Not all feminists agree on how to deal with the issues surrounding sex work. As Supporting MP Sue Bradford further clarified, Opposing MPs are influenced by a different type of feminism than the Supporting MPs. She describes the type of feminism observed among Opposing MPs as follows:

> There is a feminist strand of thought that opposes this bill. This seems to come from a perspective that says that because prostitution is fundamentally an unpleasant, yucky kind of thing for most people even to think about, and because some sex workers have had abuse in their earlier lives, somehow that means that all prostitutes should continue to be criminalised for their profession. (Bradford February 19th 2003 l. 779-783)

She furthered explained the type of feminism practiced by Supporting MPs:

> As a lifelong feminist myself, I acknowledge the desire behind that line of thought to bring an end to something that its proponents see as degrading and exploitative, but I come from another strand of feminist thinking that believes that it is our job to do everything we can to make life better for all women, even those who are in this most vulnerable of occupations. (Bradford February 19th 2003 l. 786-787)

By admitting the "desire behind that line of thought", Bradford outlines the practicality of the PRB. This type of feminism stems from a pragmatic approach since it does not condone sex work but accepts it as part of reality. It acknowledges the

limitations of criminalization and the consensual aspect of sex work. The pragmatic approach is expressed by Bradford as follows:

> In dealing with this bill we are not talking about some kind of abstract theory, but about the reality of people's lives. It is no use waiting for some utopian future to come true. I would much rather do everything I can, right now, to help protect and empower those who, for whatever reason, have chosen to make prostitution their occupation. (Bradford February 19th 2003 l. 794-797)

The proposed bill offers a better alternative than the pre-bill regime because it encourages and facilitates the exiting of people working in the sex industry, however, it also protects the people remaining in the industry. The solution advocated by the PRB aims at helping all workers in the sex industry rather than only the exploited or the victims.

Gordon also addressed the issue relating to the exiting of sex workers from the industry (November 8th 2000). She argued that the 'freeing' of sex workers is a key issue but not possible under the pre-bill framework. Under sexist and archaic laws, sex workers are trapped in the industry showing the need for change. Whether or not someone wishes to remain in the industry is a personal choice and not the role of the state to make that decision. She argued, however, that "The way to do it is to develop good opportunities in the community so that young women do not have to go into prostitution if they do not want to" (Gordon November 8th 2000 l. 305-306). Gordon (November 8th 2000 l. 299-306) used this opportunity to declare that not all sex workers wish to exit the industry but for those who do, the State must be present to lend a hand.

Alongside Gordon, Barnett also claimed that the proposed bill would facilitate the exiting of sex workers from the industry (February 19th 2003 l. 116-122). The long-term

aim of the bill is to detect the barriers and the catalysts regarding the exiting and entering of the sex industry. In order to achieve this goal, the bill included a clause obliging NZ to fund a review committee, three to five years following the enactment of the bill, to outline precautions that can be adopted by the state or the communities in order to encourage individuals to exit the sex industry, and how to deter people from entering the industry. Chadwick further reminded the House that alongside the bill, organizations such as the NZPC would continue to help sex workers exit the industry (February 19th 2003 l. 1093-1095). The aim of the bill is not to promote commercial sex but to facilitate the process of helping the population in question.

Furthermore, Goff used this opportunity to outline how sex workers trying to exit the industry are drastically affected by criminality. As he mentioned, "making them criminals does nothing to help their position" (Goff February 19th 2003 l. 674). He added:

> Worse than that, making soliciting a crime actually serves as an obstacle to ensuring that people are not subject to exploitation or coercion, to eliminating unsafe sexual behaviour, and to excluding the criminal organizations that are currently heavily involved in this area. (Goff February 19th 2003 l. 680-683)

He highlighted the relationship between the soliciting laws and barriers in exiting the industry.

Goff also felt that:

> We as a Parliament should probably look at doing more to help the people who come under that category [sex workers who work because of economic necessity or drug addictions] to extract themselves from the industry. (Goff February 19th 2003 l. 671-674)

It is evident from the above discursive framing that the safety of sex workers is at risk under a criminalized system and that sex work related laws hinder the exiting of sex workers from the industry. Supporting MPs emphasized the added vulnerability of sex workers under a quasi-criminalized system. The legal status of sex work and its activities decreases accessibility from sex workers to the justice system, in case of abuse, and decreases accessibility to good opportunities. All-in-all a punitive approach to sex work is a disservice to all sex workers, especially sex workers who wish to exit the industry.

Conclusion

From a public health perspective, NZPC helped the writing of the PRB in hope of creating change for sex workers and the people working in the industry. Decriminalization has become more and more popular in the last two decades (Weitzer 2008) and with the rise in support of the sex work discourse, it has perpetuated legal and social change in many countries (Frances 2007). Based in a public and individual health perspective, decriminalization was presented by the Supporting MPs as the best model to protect the workers and the communities from the ailments of the industry. It was argued that the relations between sex workers and clients, as well as other people working in the industry would change for the positive if the PRB were enacted. Additionally, relations between sex workers and non sex workers such as police and health officers would also be affected positively by decriminalization.

The above discussion shows that the debate is centred on which group of people the pre-bill system protected more and which group would benefit the most from the enactment of the PRB. By highlighting that sex workers are the most vulnerable under a punitive approach, the Supporting MPs underline the contradictions and power relations

present in a quasi-criminalization system. The need for change is emphasized by demonstrating that all ailments and problems have falsely been blamed on sex workers, neglecting the role clients and management have in the industry. Under a decriminalization model, clients and management are also made accountable for a safe sex industry.

Chapter VI- Discussion

On November 8th 2000, New Zealand (NZ) Parliament held the first vote in favour of the decriminalization of sex work. With a winning margin of 87 yes and 21 noes, the *Prostitution Reform Bill* (PRB) began its political process with strong support. It did not stay strong: votes cast during the second and third reading show that the support of the PRB dwindled. Further, between the first and the second reading, the proposed bill underwent a wave of amendments that made it resemble a legalization framework more than a decriminalization framework. In fact, the Select Committee was accused of having turned the bill into a legalization bill. The changes made to the bill played a significant role in the number of Members of Parliament (MPs) voting in support of the PRB.

This chapter explains how the *Prostitution Reform Act* (PRA) is representative of the influence of the moral order perspective, as described in Chapter III. Due to the moral order perspective, some MPs worried that the content of the bill changed from a decriminalization approach to a legalization approach, once again allowing for the limiting and restricting of certain sex work related activities. This is evident in the changes made to the initial PRB. The chapter begins by introducing 'how' the amendments were discussed by MPs and how the additions to the PRB; sections 12 and 14, could have been interpreted as changing the original aim of the proposed law reform.

Legalization or decriminalization

To turn a bill into law it must undergo two examinations. The PRB underwent many amendments including changes in definition of terms and additions to the sections. At the introduction, the PRB included 11 clauses and at its finalization 52 sections (Healy 2005) (Appendix 4-5). These changes were made at all steps of its political evolution. Throughout its journey, rumours began circulating about how these changes were

affecting the intent and aim of the original bill. Supporting MPs were divided in how to interpret the amendments. Supporter MP Sue Bradford explained the amendments as follows:

> We did pass some clarifying amendments, and did things like widening the responsibility for the provision of safe sex materials and setting up a review committee to monitor how the bill works out in practice, but none of this in any way significantly changed its original concept, intent, or scope. (Bradford February 19th 2003 l. 738-740)

For Bradford, the amendments did not affect the aim of the bill to decriminalize the sex industry, however, she recognized that others may not see it that way since rumours were circulating that tainted its reputation (February 19th 2003 l. 734-741). During her second speech she speculated that the three year gap between the first and the second reading raised new concerns and fears as did anxiety arising from the changes advocated by the Select Committee. She stated the following:

> In the end, the Justice and Electoral Committee did not make major changes to Tim Barnett's original Prostitution Reform Bill, as some would have the House believe. (Bradford February 19th 2003 l. 736-738)

She then urged other MPs not to change their minds *vis-à-vis* the bill. For example, she stated that "To those MPs who supported this bill at the end of the first reading, I would like to say that there is no reason to change their vote now" (Bradford February 19th 2003 l. 742-743). She reassured the House by stating that she attended all Select Committee meetings and heard many submissions from a wide range of perspectives such as sex workers, nuns, feminists, brothel owners, church leaders, women's groups, local government representatives, and others, and therefore could vouch that the bill in the

House today, is similar in intent to the bill voted in the first reading (Bradford February 19th 2003 l. 729-733).

The fear of a loss in support for the PRB was also expressed by other MPs. For example, Russel Fairbrother described the reforms instilled by the Select Committee as follows:

> Those reforms are not reforms legalising prostitution, and they are not reforms setting up a regime of approval of the activity, but are merely fundamental, commonsense, health and safety and non-exploitive reforms. (Fairbrother February 19th 2003 l. 838- 840)

Fairbrother's need to reassure the audience that the PRB was not becoming more and more like a legalization model, demonstrates that he was worried that the rumour might hinder the advancement towards decriminalization. Obviously, not all MPs agreed that the changes made to the PRB altered the aim of the bill from decriminalization to legalization.

As mentioned in Chapter I, there is a slight but important difference between the legalization and the decriminalization of the sex industry. The distinction is most evident in how the industry is organized after it becomes legal. Legalization imposes a rigid license system over the industry. For example, state specified conditions such as zoning laws in relation to brothels and street soliciting are implemented, in turn regulating the industry through the legal system. In contrast, decriminalization takes a more *laissez-faire* approach in that it repeals all sex work related laws in order to allow Health and Safety regulations to be implemented on the industry.

The amendments were also discussed by other Supporting MPs but in a different manner. According to Tim Barnett (February 19th 2003 l. 136-140), the changes made to

the bill were for the best and made the bill more compatible and acceptable to a larger portion of the population than before. He described the changes to the PRB as making it more attractive and conducive to everyone's needs. For example, he argued the bill now includes a clear statement that the decriminalization of the sex industry does not signify the endorsement or moral sanctioning of the industry. In addition, the bill now places extra responsibility on the brothel owners for safer-sex practices and "removed the defence of reasonableness for clients of under 18 year old workers who might claim that they thought the sex worker was over 18" (Barnett February 19th 2003 l. 136-140). The onus of responsibility was widened to encompass all parties involved versus only the worker. Barnett praised the amendments made by the Select Committee (February 19th 2003 l. 158-159).

The Supporters of the PRB also tried to convince the House that the amendments enacted by the Select Committee were positive and conducive to the containment of the sex industry. The above arguments stressed the potential need for some regulations. For example, the possibility of including some state regulations over the industry was used by the Supporters to convince the audience that everyone, including sex workers and non-sex workers, was represented in the PRB.

At the second reading, Supporting MP Phil Goff supported the bill even though it was not at its best and acknowledged that it still needed revisions. As Goff urged—alongside the need to give "greater protection to the community against problems that may continue, or problems that may arise under decriminalization" (February 19th 2003 l. 685-686)—the risks associated with the sex industry can only be adequately dealt with if NZ foregoes fundamental legal and social change. It is for these reasons that Goff

chose to support the PRB and would introduce a Supplementary Order Paper to address the shortcomings of the bill.

According to Goff, the state would need to come up with a licensing system in order to stop "bad" brothel owners. He also specified that the amendments do not target the clients or the workers, but rather the brothel-keepers. For example, brothel licenses would only be granted to individuals with minor offenses. He described the filtering system as follows:

> Those with criminal records involving serious sexual, violent, drugs or arms offences would be prohibited from holding a license, as would those people who have committed gang-related offences. (Goff February 19th 2003 l. 696-698)

The controlling of "rapists, drug traffickers, or a violent person" from managing a legal brothel is crucial in ensuring the safety of the workers. Under the proposed bill, as it stood in the second reading, anyone, regardless of criminal history, could become a brothel licensee (Goff February 19th 2003 l. 702).

According to Goff (February 19th 2003 l. 703-714), a second amendment missing from the proposed bill is the allotment for communities to prohibit the establishment of brothels in offensive or inappropriate locations such as residential areas or near preschools or schools. As with the moral order perspective, the containment of the industry is equated with communal order. The bill must take in consideration the needs of residents, workers, and the industry. The creation of territorial authorities would enable the introducing of legal brothels within the communities to be limited and controlled. In other words, the community would have the ability to remove or prohibit the running of a brothel in inappropriate and offensive locations.

In addition Goff (February 19th 2003 l. 712-713) presumed that all communities have areas where brothels could not be deemed as inappropriate and offensive. He stated "There are clearly commercial areas where the establishment of such a place of prostitution would not cause local offence" (Goff February 19th 2003 l. 713-714). He continued by explaining that territorial authorities would not have the authority to completely ban the establishment of brothels since all communities have industrial or non-residential areas. The role of territorial authorities is to mediate between the running of the sex industry and the residents. Goff urged the House to vote for the passing of the bill into the Committee of the Whole House stage in order to introduce by-laws or safeguards for the communities or residents (Goff February 19th 2003 l. 715-719).

These regulations were also foreshadowed by the promoter of the PRB, Tim Barnett. He stated that "At the Committee stage we will consider further amendments; some may float changes on limited licensing and zoning, and, depending on their details, I think they could be supported" (February 19th 2003 143-146). His predictions were correct because by the third reading the PRB included two sections (12 and 14) delegating governing power over the regulation of advertisement relating to the selling of commercial sex and brothel locations.

The above changes divided Supporting MPs. Some Supporting MPs, such as Bradford and Fairbrother, felt threatened by the changes and felt the need to reassure the House that the amendments were not changing the aim of the PRB. Instead of feeling threatened by the amendments other Supporting MPs, such as Goff and Barnett, viewed the changes positively. Evidently, by the second reading Supporting MPs were divided in

how to interpret the amendments proposed by the Select Committee and the ones to come. So how were these changes and rumours perceived by Opposing MPs?

Decriminalization as 'bad' as legalization

The Opposition capitalized on the above fear surrounding the alleged new direction of the PRB, to criticize decriminalization. By the second reading, the Opposition was associating the problems arising from a legalization model with a decriminalization model, leaving little alternative but a criminalization framework. By conflating the definitions of the two legal models, Opposing MPs were able to criticize decriminalization with the same criticism related to the legalization model. NZ is the first country to decriminalize sex work so there was no evidence at the time of the readings on the effects of decriminalizing sex work. There were, however, data on the effects of legalizing it. Legalization was associated with an increase in sex work and the development of an illegal sector alongside the legal one. Without concrete data, Opposing MPs repeatedly linked these downfalls to the decriminalization model.

As discussed in Chapter III and IV, predicted outcomes played a major role in how the PRB was perceived and described by Opposing MPs and a central argument against the liberalization of the sex industry was the fear of an influx of workers once it was legalized. According to the Opposition, no evidence was presented to show a relation between the decriminalization model and the reduction in sex work. MP Larry Baldock described the lack of evidence as follows:

> There is simply no evidence anywhere in the world that decriminalising has led to a reduction in prostitution or has reduced child prostitution. The aims of the bill may be admirable, but we must ask ourselves whether this legislation can achieve those aims... The society of New Zealand has a right to expect that this law will result in a healthier and better society, not just

> for the 8,000 prostitutes who are estimated to be trapped in that kind of work but also for the families across this nation, who must raise their children in the environment that we create and legitimise by the laws we pass in this House. (Baldock February 19th 2003 l. 312-314)

According to Baldock, the enactment of the bill would not decrease the number of people participating in commercial sex but rather it would create a system where the establishment and the continuation of brothels would be facilitated (February 19th 2003 l. 343-344).

MP Peter Brown continued by asserting that to decriminalize the "procuring for financial gain of a woman or a young man for the selling of sex—for that person to have sexual intercourse with a third party" (February 19th 2003 l. 343-344) is to permit the act of 'pimping'. As Brown asserted, the bill "gives incentive to the ratbags in this country to procure young woman, or to entice them, for the purpose of selling sex" (Brown February 19th 2003 l. 345-346) leading to an increase in sex workers.

Brown further associated an increase in sex work with an increase in the problems associated with the industry such as drug addiction, child prostitution, and the spreading of STIs. He argued that an increase in sexual activities, criminal activity, and trafficking of women would follow once it was decriminalized and finally "a disproportionate number of Maori women in particular, would become involved in prostitution" (Brown February 19th 2003 l. 374-375). According to Opposing MPs, decriminalization or legalization of the sex industry would lead to an increase in sex workers and participants in the sex industry.

Furthermore, a second major criticism against the legalization model is the upsurge of an illegal sector alongside the legal one. This phenomenon is called a two-tier system. As Baldock described:

> We try to decriminalize and legalize in order to get rid of the criminal element, only to find that it springs up again in parallel and does more damage than we had in the very beginning. (Baldock February 19th 2003 l. 252-254)

Baldock argued that the re-emergence of unlicensed brothels would cause more harm than the pre-bill criminalization system (February 19th 2003). Both the legalization and the decriminalization of the sex industry were perceived by Opposing MPs as creators of problems rather than solutions. Baldock's approach is evident of the anxiety felt by the audience participating in the debate. His tactic capitalizes on these worries since he repeatedly accused the bill of resembling legalization rather than a decriminalization model. Let's examine the following statement:

> I hope the members of this House will remember these words when they are thinking about supporting the second reading of this bill, and then moving amendments to introduce licensing and zoning, because they will be changing this bill from a decriminalised model to a legalised model, which the supporters of the bill themselves have said is a disaster. If members visit Victoria in Australia they will discover that its legislation of this type has not worked, and I have not heard one prostitute or member of the Prostitutes Collective suggest that we should follow that example. (Baldock February 19th 2003 l. 255-261)

The above excerpt shows how the Opposition to the PRB capitalized on the failures of the legalization model in Australia to argue against the PRB and decriminalization. This discursive tactic was effective. For example, MP Nanaia Mahuta changed her mind mid-way (February 19th 2003). She voted in support of the PRB in the first reading but against it in the second reading. Her decision pivoted around two main

concerns: the rights of sex workers and the protection for the most vulnerable people working in the sex industry: the Maori women. Mahuta felt that the proposed bill was filled with anomalies that would cause more harm than good for the people working in the sex industry. She aimed for no change, claiming that the pre-bill system protects sex workers more than if the PRB were enacted. Mahuta and Baldock rejected both legalization and decriminalization because they felt both models failed to protect and safeguard the interests of sex workers and communities. By discarding both the legalization and the decriminalization system as plausible solutions, MPs reduced the answer to criminalization: added restrictions to sex work or its related activities.

Territorial authority may make by-laws

In face of the above criticisms, the moral order perspective was successful in delegating some governing power to local authorities. The political outcome from the above mentioned tension was the implementation of sections 12 and 14 attributing governing power to local government. These sections give local authorities authority to stipulate where advertisements for the purpose of selling commercial sex and brothels are to be located. As of yet, Councils have not been successful in implementing by-laws regulating the sex industry, however, their presence in itself is a symbol of the tensions presented above.

Section 12 of the PRA: bylaws controlling signage advertising commercial sex

Opposing MPs worried that a consequence of the PRA would be an increase in the visibility of the sex industry. The PRA addressed this anxiety by including a section that specifically outlined advertising restrictions. The restrictions are in relation to the

location and content of advertisement. Section 12 grants local authorities permission to put in place bylaws regarding advertisement for sexual commercial services. The visibility of the adverts is regulated by the amount of signage in public view, and the content is outlawed if it:

> (a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or
> (b) is incompatible with the existing character or use of that area.
> (PRA 2003 p.9)

This section of the PRA also limits the location of advertisement for the purpose of commercial sex. In addition to content restrictions, no adverts used to notify or promote the sale of commercial sexual services are permitted to be broadcasted on radio or television, screened at a public cinema, or printed in newspapers except in the classified section of the paper. Section 12 can be utilized by city council to outlaw the visibility and advertisement for commercial sexual services, once again legally regulating sex work related activities.

Section 14 of the PRA: bylaws regulating location of brothels

The PRA also granted local authority governing power over the location of brothels. As with Section 12, Section 14 grants the power to local government on the location of brothels. The location of brothels is regulated by minimising its visibility and its offensive character. Exactly as with the content of the adverts, the location of brothels must remain non-offensive to the "ordinary members of the public using the area in which the land is situated" (PRA 2003, p.9 and 10), and must remain aesthetically compatible with its surrounding.

Section 12 and 14 do not overtly outlaw the advertisement for the purpose of commercial sexual services, or brothels. No city council can put in place a by-law overtly outlawing all adverts or all brothels because the governing power attributed to city council is limited to the location and the content of adverts, and the location of brothels. However, these two avenues grant municipal government the power to control and regulate sex work related activities as a legalization framework would. If used by local authorities, the above sections can be accused of turning the PRA from decriminalization to a legalization model.

Conclusion

The support for the PRB dropped as the debate evolved: it decreased from 87 to 60 yes. The above discussion shows how the arguments brought forth by the Opposition had an effect on the outcome of the PRA relating to its final version and the voting. MPs asserted that amendments to the PRB changed the proposed legislation from a decriminalization to a legalization approach. The restrictions placed on advertisement and brothel location (section 12 and 14) at the municipal level can be seen as imposing state regulated control over sex work related activities. Even though the Select Committee did make changes conducive to the wishes of the Opposition, the amendments also sub-divided Supporting MPs. Supporting MPs were divided on how to perceive the changes recommended by the Select Committee.

The NZ case study teaches us that tension resides between advocates for a decriminalization model and advocates for a legalization model. The discursive divides amongst Supporters for decriminalization and Supporters for legalization led to a drastic and constant decline in support for the PRB. The amendments made by the Select

Committee and their resemblance to a legalization approach instilled a fear that the aims of the original bill were changing. Based on the definitions of 'decriminalization' and legalization, the PRA can easily be categorised as an exemplary 'decriminalization with regulation' model.

Overall, the discussion shows that an additional discursive divide in NZ Parliament hindered the advancement of the sex workers' rights movement. The confusion and grouping of legalization and decriminalization together had a negative impact on the support of the PRB. As mentioned above, MPs changed their minds relating to the PRB because of the amendments following the first reading. The changes made on the proposed bill were no longer viewed as conducive to the original aims of the PRB but as resembling more and more legalization versus a decriminalization legislative approach.

Discursive cleavages are important to reveal because they represent places of conflict. Political discourses aim to silence other competing discourses in order to convince. In addition to the moral divisions generally seen, we observed an added divide in NZ. The NZ case is unique because of the discursive tension between Supporters of decriminalization and legalization. This discursive cleavage has not been identified in other research on political discourses surrounding sex work (Outshoorn 2001; Kantola and Squires 2004; Weitzer 2008). This division is evident in how Supporting MPs first emphasized that the aim of the PRB was decriminalization and not legalization and how subsequently, Opposing MPs utilized this distinction to group them both under the same criticisms.

Whether intended or not, the Opposition was successful in further dividing Supporting MPs. As victorious as the public health perspective was in NZ political debates between 2000 and 2003, we can identify a discursive threat. The NZ case teaches us that Opposing MPs sub-divided Supporting MPs by conflating the different frameworks. A steady decline in support for the PRB is evidence that more and more MPs began to reduce the solution to a punitive approach rather than a non-punitive approach, silencing once again the cry from sex workers. As positive as the outcomes for sex workers are from enacting the PRB (Abel et al. 2007) complete decriminalization remains threatened by the presence of sections 12 and 14.

Chapter IIV- Post-2003: Health and Safety of Sex Workers

During the political debates surrounding the proposed legal change, some New Zealand (NZ) Members of Parliament (MPs) based their vote on predicted outcomes. Some argued in favour of decriminalization because it would lead to an improvement in work relations between sex workers and non-sex workers while others argued against it predicting that it would facilitate entry and lead to an increase in sex work. Released in 2007, a government report concluded that the former was the outcome. Based on both quantitative and qualitative research methods, the study—funded by the NZ government to examine the impact of the law change on the health and safety practices of sex workers (Abel et al. 2007)—released some fascinating findings.

Contrary to some commentators, decriminalization did not increase the number of street sex workers (Abel et al. 2007: 171). Prior to the law change, it was estimated that one out of ten sex workers worked on the street and no change was detected. Additionally, the report concluded that overall there was no increase in practicing sex workers. The findings showed that there was little change after 2003 with the exception of a trend of movement from the managed to the private sector. The findings from the report are important because they show that the belief that decriminalization leads to an increase in sex workers is unfounded and that the law change had little impact on the visibility of the industry and on the community. Even more importantly, the findings show that decriminalization had a positive impact on the safety and health practices of sex workers by improving the relations between sex workers, clients, management and the police.

Relations between sex workers and clients, and sex workers and the police improved in a number of ways. First, prior to decriminalization, sex workers had no legal right to refuse a client. One of the benefits from decriminalizing sex work in NZ was the attribution of responsibility to all parties involved in the promotion and participation of commercial sex. Under a quasi-criminalized regime, sex workers had no legal recourse to refuse to conduct the work unprotected (i.e., without a condom). Decriminalization gave sex workers the legal right to refuse to have unprotected commercial sex while maintaining control over the transaction. Additionally, section 8 and 9 of the *Prostitution Reform Act* (PRA) extended the responsibility of safe sex practices to management and clients, in turn empowering the worker.

Another important consequence for sex workers was 'the right to refuse'. Prior to decriminalization, sex workers had little recourse when fired for refusing to perform certain sexual acts. Without protection from the state, it was easier for clients and management to force sex workers to conduct certain sexual acts, thus diminishing control over the use of their own bodies. Section 16 and 17 of the PRA gives sex workers the 'right to refuse' to perform any sexual act without fear of reprisal from the client or management. Even though not all workers work within a context of ordinary employment or contract law, the PRA insures that all workers are protected by law regardless of where or for whom they work. The security of knowing that, regardless of the initial contract established between a client or manager and a sex worker, the worker always holds the final say is priceless. The legal change gives sex workers greater control over how the work is performed and with whom, reducing the potential for worker exploitation and abuse.

A third benefit related to decriminalizing sex work impacts the relationship between sex workers and the police. Pre-2003, the law was subject to police discretion and not used to protect sex workers. Under a quasi-criminalization system, the relations between sex workers and the police can be confusing because of the contradiction in the laws. It was the activities surrounding the act which were illegal and not the act itself making the number of arrests of sex work offences dependent on police discretion and political pressure. This legal contradiction merely fostered unequal power relations between the groups and hindered accessibility by sex workers to police protection. In order to address the gap between law and enforcement, the PRA included section 30 and 31 of the PRA defining the relationship between sex workers and police officers making it clear what the role of the police are in relation to sex workers. By overtly defining the powers of entry, workers no longer have to worry about getting arrested while working or seeking help from the police. By repealing sex work related laws, the role of the police in relation to sex workers changed: instead of being treated as criminals, the police are obliged to protect them. Such actions increase the safety of sex workers.

Furthermore, sex work related laws obliged NZ sex workers to work on the street instead of indoors. Prior to the law change, sex workers were able to work in massage parlours but only with a permit. However, not all sex workers could obtain a permit obliging them to work illegally. Without a permit, some sex workers had little choice but to work on the street where they faced police harassment and elevated dangers. Decriminalization also removed the above mentioned barriers from working indoors: sex workers no longer have to register, or acquire a license, or obtain police authority before advertising for the purpose of sex work. The PRA also allowed small groups of sex

workers to work together without a brothel license. Small owner-operated brothels include a maximum of 4 workers at any time who retain complete control over their earnings. The legal change gave added control to sex workers because under this legal model they choose the work environment most suitable to their needs. Overall, the PRA enhanced sex workers control over how and where the work is performed in turn increasing personal health and safety practices.

Even in face of all the good generated from decriminalizing sex work, the PRA failed to bridge and heal the tension between sex workers and residents. Other events demonstrate how the visibility of the industry remains problematic. With territorial authorities using by-laws dictating the location of brothels and the attempt by the Manukau City Council to criminalize street soliciting, sex work still remains a political and social issue. Tension between sex workers and residents is still present in NZ reaffirming the social cleavage between the groups. Decriminalization eased the legal barriers from practicing safe sex work but it is evident that it did not alleviate the social stigma against sex workers thus highlighting the continued need to fight for the social recognition of sex workers as workers and citizens.

Contributions

Social and policy outcome is crucial for many social movements since it either symbolizes success or loss. Whether it is to restrict or enable modes of being, collective groups view social policies as the source for structural change and in turn societal change. Although not all social movements aim for political change, the movements that do depend on the persuasion of political actors for success can rely on discourse as a strategy (McCammon et al. 2007). Most current research on the sex workers' rights movement concentrates on its failures (Weitzer 1991; Jenness 1993; Poel 1995). Little

work has been done on successful social movements (Burnstein et al. 1995: 275). As Burnstein et al. (1995) argue "the many studies of movement emergence, participation, and maintenance done since the 1970s mean little if movements never effect social change or if their successes are beyond participants' control" (276). NZ represents a victory for the movement and an opportunity for researchers, such as me, to fill a void in the literature. Since the NZ experience provides a framework to explain social movement outcome, it becomes even more vital. Although this analysis cannot be used to formulate a universal framework, it can pave the way for future cross-national comparisons and open the door for future discussions regarding political discourses and policy outcome.

The importance of this research is not limited to academia. The findings can be used by grass-roots collectives and other policy agencies—such as Human Rights organizations—as a way to understand how they can succeed. Secondly, policy makers can use it in order to better comprehend the role of discursive framing in policy making. This may lead to policy agencies to be more reflexive when making revisions and tabulating a final document. All-in-all, the findings of this study can be used by sex workers' rights collectives, sex workers, activists, and policy makers trying to improve the lives and working conditions of sex workers.

Bibliography

Abel, G., L. Fitzgerald, and C. Brunton. (2007). *The Impact of the Prostitution Reform Act on the Health and Safety Practices of Sex Workers.* Report funded by the Health Research Council of New Zealand and the Ministry of Justice. Christchurch: University of Otago, <http://www.justice.govt.nz/prostitution-law-review-committee/publications/impact-health-safety/>. Retrieved April 4th 2008.

Albert, A. (2001). *Brothel: Mustang Ranch and Its Women.* New York: Ballantine Books.

Barry, K. (1995). *The Prostitution of Sexuality.* New York: New York University Press.

Béland, D. (2005). "Ideas and Social Policy: An Institutionalist Perspective." *Social Policy and Administration*, 39 (1), 1- 18.

Bell, H., L. Sloan, and C. Strickling. (1998). "Exploiter or Exploited: Topless Dancers Reflect on Their Experiences." *Affilia*, 13 (3), 352-368.

Brock, Deborah R. (1998). *Making it Work, Making Trouble: Prostitution as a Social Problem.* Toronto: University of Toronto Press.

Burnstein, P., R. L. Einwohner, and J. A. Hollander. (1995). "The Success of Political Movements: A Bargaining Perspective." *The Politics of Social Protest: Comparative Perspectives on States and Social Movements.* Eds. J. Craig Jenkins and Bert Klandermas. Minneapolis, MN: University of Minnesota Press. 274-295.

Davis, S. and Shaffer, M. (1994). "Prostitution in Canada: The invisible menace or the menace of invisibility?" Vancouver, Commercial Sex Information Service <http://www.walnet.org/csis/papers/sdavis.html>. Retrieved April 4th 2008.

Dobrowolsky, A. and J. Jenson. (2004). "Shifting Representations of Citizenship: Canadian Politics of 'Women' and 'Children'." *Social Politics*, 11 (2), 154-180.

Doezema, J. (1998) "Forced to Choose: Beyond the Voluntary vs. Forced Prostitution Dichotomy." *Global Sex Workers: Rights, Resistance, and Redefinition.* Eds. K. Kempadoo and J. Doezema. New York & London: Routledge. 34-50.

Doezema, J. (2000). "Loose Women or Lost Women? The Re-Emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women." *Gender Issues,* 18 (1), 23-50.

Fairclough, N. (1993). "Critical Discourse Analysis and the Marketization of Public Discourse: The Universities." *Discourse and Society*, 4 (2), 133-168.

First Session, Forty-sixth Parliament, 1999-2000. October 8 2000. The New Zealand Parliament. < http://www.parliament.nz/en-NZ/PB/Debates/Debates/>. Retrieved April 5th 2008.

First Session, Forty-sixth Parliament, 1999-2000. November11 2000. The New Zealand Parliament. < http://www.parliament.nz/en-NZ/PB/Debates/Debates/>. Retrieved April 5th 2008.

First Session, Forty-seventh Parliament, 2002-2003. 19 February 2003. The New Zealand Parliament. < http://www.parliament.nz/en-NZ/PB/Debates/Debates/>. Retrieved April 5th 2008.

First Session, Forty-seventh Parliament, 2002-2003. 25 June 2003. The New Zealand Parliament. < http://www.parliament.nz/en-NZ/PB/Debates/Debates/>. Retrieved April 5th 2008.

Frances, R. (2007). *Selling Sex: A Hidden History of Prostitution.* Sydney: University of New South Wales Press.

Frances, R. and A. Gray. (2007). "Unsatisfactory, Discriminatory, Unjust and Inviting Corruption: Feminists and the Decriminalisation of Street Prostitution in New South Wales." *Australian Feminist Studies,* 22 (53), 307-324.

Healy, Catherine. (2005). "Decriminalising Our Lives and Work: the New Zealand Deal." *eXXXpressions: Forum XXX Proceedings.* Ed. Stella, Montréal, Québec: Canada. 92-94.

Jeffrey, L.A. (2004). "Prostitution as public nuisance: prostitution policy in Canada." *The Politics of Prostitution: Women's Movements, Democratic States and the Globalization of Sex Commerce.* Ed. Joyce Outshoorn. Cambridge: Cambridge University Press. 83-103.

Jeffrey, L.A. and G. MacDonald. (2006a). "The Economy of the Sex Work in the Maritimes."
The Canadian Review of Sociology and Anthropology, 43 (3), 313- 327.

Jeffrey, L.A. and G. MacDonald. (2006b). *Sex Workers in the Maritimes: Talk Back.* Vancouver:
University of British Columbia Press.

Jenness, V. (1993). *Making it Work: The Prostitutes' Rights Movement in Perspective.* New York: Aldine de Gruyter.

Jordan, J. (2005). *The Sex Industry in New Zealand: A Literature Review.* Ministry of Justice.
New Zealand: Wellington. < http://www.justice.govt.nz/pubs/reports/2005/sex-industry-in-nz-literature-review/index.html>. Retrieved April 4th 2008.

Kantola, J. and J. Squires. (2004). "Discourses Surrounding Prostitution Policies in the UK."
European Journal of Women's Studies, 11 (1), 77-101.

Kantola, J. and J. Squires. (2004a). "Prostitution policies in Britain, 1982-2002." *The Politics of Prostitution: Women's Movements, Democratic States and the Globalization of Sex Commerce.* Ed. Joyce Outshoorn. Cambridge: Cambridge University Press. 62-83.

Kulick, D. (2003). "Sex in the New Europe: The Criminalization of Clients and Swedish Fear of Penetration" *Anthropological Theory*, 3 (2), 199-218.

Lowman, J. (2000). "Violence and the Outlaw Status of (Street) Prostitution in Canada." *Violence Against Women*, 6 (9), 987-1011.

Lowman, J. (1998). "Prostitution Law Reform in Canada." *Toward Comparative Law in the 21st Century.* Ed. Institute of Comparative Law in Japan. Tokyo: Chuo University Press. 919-949.

McCammon, H., Courtney Sanders Muse, Harmony D. Newman, and Teresa M. Terrell. (2007). "Movement Framing and Discursive Opportunity Structures: The Political Successes of the U.S. Women's Jury Movements." *American Sociological Review*, 72, 725-749.

New Zealand. Committee of the Whole House. *Prostitution Reform Bill.* Wellington, 2003. < http://www.brookers.co.nz/bills/enacted_bills/b000663.pdf>. Retrieved June 4th 2009.

New Zealand. Justice and Electoral Committee. *Prostitution Reform Bill*: Bill Digest 933. Wellington, 2002a. <http://www.parliament.nz/NR/rdonlyres/CAD18CF7-C2E0-4016-85CB-2AF097F0D325/50278/933Prostitution1.pdf>. Retrieved April 4th 2008.

New Zealand. Justice and Electoral Committee. *Prostitution Reform Bill.* Wellington, 2002b. http://www.parliament.nz/NR/rdonlyres/0B92955B-B73F-4AB1-B9FA-21194C848DE5/47814/DBSCH_SCR_2281_2626.pdf>. Retrieved April 4th 2008.

New Zealand. *Prostitution Reform Act.* Wellington, 2003. < http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>. Retrieved April 4th 2008.

O'Connell Davidson, J. and Derek Layder. (1994). *Methods, Sex and Madness.* Routledge: London.

Outshoorn, J. (2004). *The Politics of Prostitution: Women's Movements, Democratic States and the Globalization of Sex Commerce.* Cambridge: Cambridge University Press.

Outshoorn, J. (2001). "Debating Prostitution in Parliament: A Feminist Analysis." *The European Journal of Women's Studies*, 8 (4), 472-490.

Perkins, R. (1991). *Working Girls: Prostitutes, their Life and Social Control.* Australian Institute of Criminology: Canberra.

Phoenix, J. (2000). "Prostitute Identities: Men, Money and Violence." *British Journal of Criminology*, 40, 37-55.

Pinto, S., A. Scandia, and P. Wilson. (1990). "Prostitution Laws in Australia No. 22" *Australian Institute of Criminology: Trends and Issues in Crime and Criminal Justice.* Australian Institute of Criminology: Canberra, 1-9.

Pheterson, G. (1996). *The Prostitution Prism.* Amsterdam: Amsterdam University Press.

Poel, S. van der. (1995). "Solidarity as boomerang: the fiasco of the prostitutes' rights movement
in the Netherlands" *Crime, Law and Social Change*, 23, 41-65.

Pyett, P. M. and D. J. Warr. (1997). "Vulnerability on the streets: female sex workers and HIV risk." *AIDS care*, 9(5), 539-47.

Rose, N. (2000a). "Governing Liberty." *Governing Modern Societies.* Ed. Richard V. Ericson and Nico Stehr. Toronto: University of Toronto Press. 141-176.

Rose, N. (2000b). "Community, Citizenship, and the Third Way." *American Behavioral Scientist,* 43 (9), 1395-1411.

Rose, N. (2000c). "Government and Control." *British Journal of Criminology*, 40, 321-339.

Rose, N. (1999). *Powers of Freedom: Reframing political thought*. Cambridge: Cambridge University Press.

Rose, N. (1996). "The death of the social? Re-figuring the territory of government." *Economy and Society*, 25 (3), 327-356.

Scoular, J. (2004). "The 'subject' of prostitution: Interpreting the discursive, symbolic and material position of sex/work in feminist theory." *Feminist Theory*, 5 (3), 343-355.

Shaver, F. M. (1996). "The Regulation of Prostitution: Setting the Morality Trap." *Social Control in Canada*. Ed. B. Schissel and L. Mahood. Oxford University Press. 204-226.

Shaver, F. M. (1985). "Prostitution: A Critical Analysis of Three Policy Approaches." *Canadian Public Policy*, 11 (3), 493-503.

Shrage, L. (1994). "Comment on Overall's "What's Wrong with Prostitution? Evaluating Sex Work."" *Signs*, 19 (2), 564-570.

Smith, D. E. (1998). "Bakhtin and the Dialogic of Sociology: An Investigation." *Bakhtin and the Human Sciences*. Eds. Michael Mayerfeld Bell and Michael Gardiner. London: SAGE Publications, 63-77.

Smith, D. E. (1990). *Conceptual practices of power: A feminist sociology of knowledge*. Boston: Northeastern University Press.

Sullivan, B. (2004). "The women's movement and prostitution politics in Australia." *The Politics of Prostitution: Women's Movements, Democratic States and the Globalization of Sex Commerce*. Ed. Joyce Outshoorn. Cambridge: Cambridge University Press. 21-41

Sullivan, B. (2003). "Trafficking in Women: Feminism and International Law." *International Feminist Journal of Politics*, 5 (1), 67-91.

Svanström, Y. (2004). "Criminalising the john - a Swedish gender model?" *The Politics of Prostitution: Women's Movements, Democratic States and the Globalization of Sex Commerce*. Ed. Joyce Outshoorn. Cambridge: Cambridge University Press. 225-245.

Tunnha, H. (2003, June 27). MP: Why I didn't vote on sex bill. *NZ Herald.* <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=3509651>. Retrieved June 31st 2008.

Weatherall, A. and Anna Priestley. (2001)."A Feminist Discourse Analysis of Sex 'Work'. " *Feminism and Psychology*, 11 (3), 323-340.

Weitzer, R. (2008). "Legalizing Prostitution: Morality Politics in Western Australia." *British Journal of Criminology*, Advanced Access May 15 2008.

Weitzer, R. (2007). "Prostitution as a Form of Work." *Sociology Compass*, 1(1), 143-155.

Weitzer, R. (1999). "Prostitution control in America: Rethinking public policy." *Crime, Law and Social Change*, 32, 83- 102.

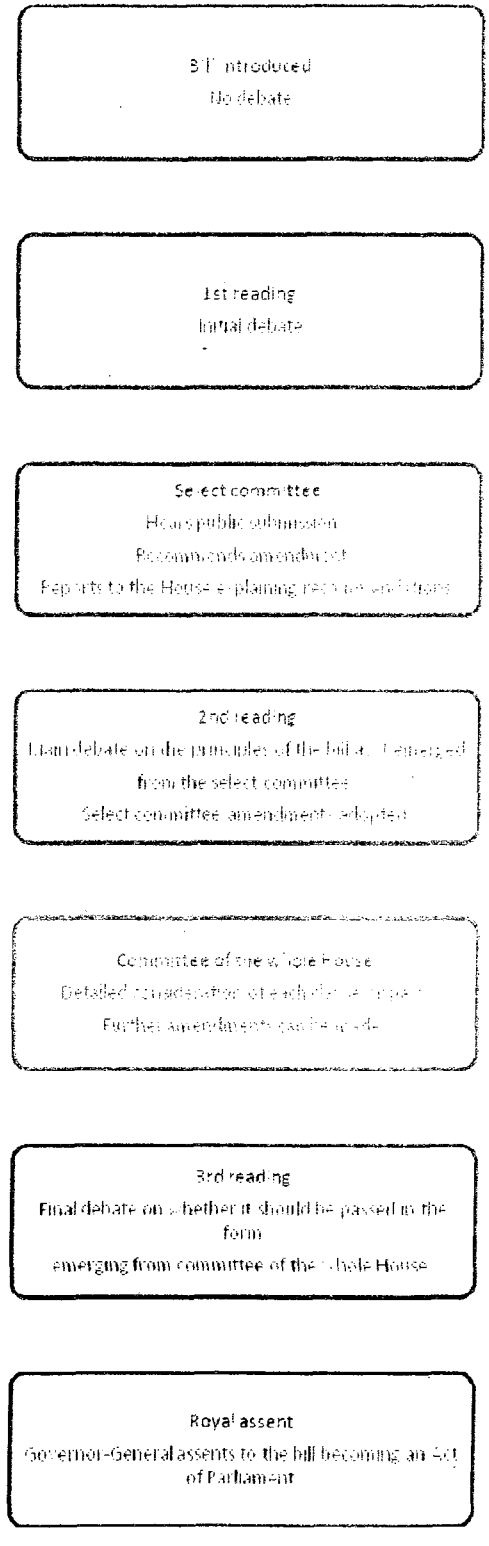
Weitzer, R. (1991). "Prostitutes' Rights in the United States: The Failure of a Movement." *The Sociological Quarterly*, 32 (1), 23-41.

West, J. (2000). "Prostitution: Collectives and the Politics of Regulation." *Gender, Work and Organization,* 7 (2), 106-118.

Young, I. (2004). "Five Faces of Oppression." *Oppression, Privilege, and Resistance: Theoretical Perspectives on Racism, Sexism, and Heterosexism.* Eds. Lisa Heldke and Ped O'Connor. Toronto: McGraw Hill. 39-56.

Zatz, N.D. (1997). "Sex Work/Sex Act: Law, Labor, and Desire in Constructions of Prostitution." *Signs*, 22 (2), 277-308.

Appendix 1 – New Zealand Legislative Process



Appendix 2 – Members of Parliament Spoken at the Readings

First Reading (October 11th and November 8th 2000)*	Political Party	For or Against the PRB
Tim Barnet	NZ Labour	For
Hon. Maurice Williamson	NZ National	For
Liz Gordon	The Alliance	For
Anne Tolley	NZ National	For
Georgina Beyer	NZ Labour	For
Peter Brown	NZ First	Against
Eric Roy	NZ National	Against
Sue Bradford	Green Party	For
H V Ross Robertson	NZ Labour	Against
Penny Webster	ACT NZ	For
Brian Neeson	NZ National	Against
87 Yes and 21 Noes		

Second Reading (February 19th 2003)*	Political Party	For or Against the PRB
Tim Barnett (intro)	NZ Labour	For
Katherine Rich	NZ National	For
Larry Baldock	United Future	Against
Peter Brown	NZ First	Against
Georgina Beyer	NZ Labour	Against
Stephen Franks	ACT NZ	For
Lynne Pillay	NZ Labour	Against
Hon Phil Goff	NZ Labour	For
Sue Bradford	Green Party	For
Russell Fairbrother	NZ Labour	For
Nanaia Mahuta	NZ Labour	For
Judith Collins	NZ National	Against
Hon Matt Robson	Progressive	Against
Steve Chadwick (female)	NZ Labour	Against
Hon Dr. Nick Smith	NZ National	For
66 yes and 52 Noes		

Third Reading (June 25th 2003)*	Political Party	For or Against the PRB
Tim Barnett (intro)	NZ Labour	For

		NZ	
	Hon. Dr. Nick Smith	National	Against
	Brent Catchpole	NZ First	Against
	Pita Paraone	NZ First	Against
	Sue Bradford	Green Party	For
	Stephen Franks	ACT NZ	Against
		United	
	Larry Baldock	Future	Against
	Hon Matt Robson	Progressive	Against
	Janet Mackey	NZ Labour	Against
		NZ	
	Dr. Paul Hutchison	National	Against
		NZ	
	Judith Collins	National	Against
	Georgina Beyer	NZ Labour	For
		NZ	
	John Carter	National	Against
	Nanaia Mahuta	NZ Labour	Against
	Peter Brown	NZ First	Against
	Dianne Yates	NZ Labour	Against
	Luamanuvao Winnie		
Laban		NZ Labour	For
	60 Yes and 59 Noes		

*Members of Parliament listed in order in which they spoke at the debates

Appendix 3 – Seat Change of Political Parties at 2002 NZ Federal Election

- **Labour list seats:** Lost 1 (was 8, fell to 7)
  - Retired: 1
  - Became electorate MPs: 3
  - Re-elected: 4
  - Newly elected: 3 (including a former electorate MP)
- **National list seats:** Lost 11 (was 17, fell to 6)
  - Retired: 4
  - Re-elected: 5
  - Not re-elected: 8
  - Newly elected: 1
- **New Zealand First list seats:** Gained 8 (was 4, rose to 12)
  - Re-elected: 4
  - Newly elected: 8
- **ACT list seats:** No change (was 9, remained 9)
  - Re-elected: 7
  - Not re-elected: 2
  - Newly elected: 2
- **Green list seats:** Gained 3 (was 6, rose to 9)
  - Re-elected: 6
  - Newly elected: 3 (including a former electorate MP)
- **Alliance list seats:** Lost 9 (was 9, fell to 0)
  - Retired: 1
  - Not re-elected: 3
  - *(Transferred to Progressives: 5)*
- **United Future list seats:** Gained 7 (was 0, rose to 7)
  - Newly elected: 7
- **Progressive list seats:** Gained 1 (was 0, rose to 1)
  - *(Transferred from Alliance: 5)*
  - Retired: 2
  - Re-elected: 1
  - Not re-elected: 2

Appendix 4 – The Prostitution Reform Bill as Introduced

Prostitution Reform Bill

Member's Bill

Explanatory note

Overview

This Bill recognises the need to reform the law relating to prostitution in New Zealand. The aims of the Bill are to decriminalise prostitution, to safeguard the human rights of sex workers and protect them from exploitation, to promote the welfare and occupational health and safety of sex workers, to create an environment which is conducive to public health, and to protect children from exploitation in relation to prostitution.

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

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

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

Prostitution reform

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

Legislative options

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

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

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

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

Clause by clause analysis

Clause 1 is the title clause.

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

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

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

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

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

Clause 7 makes it an offence to coerce any person into either providing commercial sexual services or surrendering the proceeds of any commercial sexual services provided by that person.

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

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

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

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

Tim Barnett

Prostitution Reform Bill

Member's Bill

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Prostitution Reform Act 2000.

2 Commencement

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

3 Purpose

The purpose of this Act is to decriminalise prostitution, and to create a framework which safeguards the human rights of sex workers and protects them from exploitation, ensures the legislative framework of welfare and occupational health and safety protections is able to apply to sex workers, creates an environment which is conducive to public health, and protects children from exploitation in relation to prostitution.

4 Interpretation

In this Act, unless the context otherwise requires,—

brothel means any house, room, set of rooms, or place of any kind kept or habitually used for the purposes of prostitution; but does not include premises at which accommodation is normally provided on a commercial basis if any prostitution that occurs at those premises occurs under an arrangement initiated elsewhere

business of prostitution means—

(a) any firm, organisation, body of persons in the nature of a partnership within the meaning of the Partnership Act 1908 (whether incorporated or not), which; or

(b) any person who,—

carries on a business of providing commercial sexual services

child means a person who is under 18 years

coerce means knowingly to act to prevent another person from exercising freedom of choice or action, or to induce or compel another person to undertake any action against his or her will, including actual, or implied or explicit threats of

(a) physical harm:

(b) sexual or psychological abuse:

(c) intimidation; including—

(i) the improper use of any power or authority arising out of any occupational or vocational position held by any person; or

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

(d) harassment:

(e) damage to that person's property:

(f) supplying a controlled drug within the meaning of the Misuse of Drugs Act 1975:

(g) withholding supply of a controlled drug within the meaning of the Misuse of Drugs Act 1975:

(h) withholding money or property owed to that person:

(i) imposing any pecuniary or other penalty, or taking disciplinary action, otherwise than in accordance with a person's agreed conditions of employment or service

commercial sexual services means sexual services provided for monetary or material reward (irrespective of whether the reward is, or is to be, paid or given (directly or otherwise) to the person who provided the sexual services)

prostitution means the provision of commercial sexual services

safer sex practices includes actions to minimise the risk of acquiring or transmitting sexually transmissible diseases

sex worker means a person who personally provides commercial sexual services, including, but not exclusively, services provided as part of the business of a brothel or business of prostitution.

5 Contract for provision of commercial sexual services not void

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

6 Operators of brothels and businesses of prostitution to promote safer sex practices

(1) Every person who operates a brothel or who has effective control of a business of prostitution, must—

(a) take all practical steps to ensure the use of prophylactic sheaths by clients of that brothel or business of prostitution; and

(b) give information on safer sex practices to sex workers operating in or from, and clients of, that brothel or business of prostitution; and

(c) display information on safer sex practices prominently in any premises used as part of the business of the brothel or business of prostitution; and

(d) not use the fact of a sex worker's attendance at a medical examination, or the result of such an examination, for the purpose of inducing a person to believe the sex worker is not infected with a sexually transmissible disease

(2) Every person commits an offence and is liable to a fine not exceeding $10,000 who contravenes **subsection (1)**.

(3) For the purposes of this section,—

(a) a person operates a brothel if he or she controls or manages, or takes part in the control or management of, the brothel:

(b) a person has effective control of a business of prostitution if he or she personally supervises, manages and controls the conduct of the business of prostitution.

7 Coercion

(1) No person may coerce or attempt to coerce any person into providing commercial sexual services.

(2) No person may coerce any person into surrendering the proceeds of commercial sexual services provided by that person.

(3) Every person commits an offence and is liable to imprisonment for a term not exceeding 7 years who contravenes **subsection (1)** or **subsection (2)**.

8 Right to refuse to provide commercial sexual service

Every sex worker may at any time refuse to provide any commercial sexual service or, where the provision of that service has commenced, to continue to provide that service, and any agreement purporting to remove the right to refuse to provide or refuse to continue to provide such a service is void.

9 No person to contract for or be party to provision of commercial sexual services by a child

(1) No person may cause a child to provide, or assist a child in the provision of, commercial sexual services.

(2) No person may enter into a contract or arrangement as a result of which any person receives or is to receive commercial sexual services provided by a child.

(3) No person may receive a payment or other reward that he or she knows, or could reasonably be expected to have known, is derived, directly or indirectly, from commercial sexual services provided by a child.

(4) Every person commits an offence and is liable to imprisonment for a term not exceeding 7 years who contravenes **subsection (1)** or **subsection (2)** or **subsection (3)**.

(5) No person commits an offence against this section who provides counselling or health advice to a child, but who does not otherwise encourage or facilitate the provision of commercial sexual services by that child.

(6) No child may be charged as a party to an offence committed upon or with that child against this section.

(7) It is no defence to a charge against this section that the child consented or that the person charged believed, reasonably or otherwise, that the child was 18 years or over.

Repeals

10 Repeals

The following enactments are repealed:

(a) sections 147 to 149 of the Crimes Act 1961:

(b) Massage Parlours Act 1978:

(c) section 26 of the Summary Offences Act 1981:

(d) Massage Parlours Regulations 1979 (SR 1979/35):

(e) Massage Parlours Regulations 1979, Amendment No 1 (SR 1987/52):

(f) Massage Parlours Regulations 1979, Amendment No 2 (SR 1991/193).

11 Consequential repeals

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

s 11

Schedule
Enactments repealed

Building Act 1991 (1991 No 150)
So much of the Fourth Schedule as relates to the Massage Parlours Act 1978.

Fees Regulations 1989 (SR 1987/68)
So much of the Schedule as relates to the Massage Parlours Regulations 1979, Amendment No 1.

Homosexual Law Reform Act 1986 (1986 No 14)
Section 6(2).

Summary Offences Act 1981 (1981 No 113)
So much of the First Schedule as relates to the Massage Parlours Act 1978.

Wellington, New Zealand: Published under the authority of the House of Representatives—2000

Price code: J

Appendix 5 – The Prostitution Reform Act 2003

Prostitution Reform Act 2003

Public Act 2003 No 28
Date of assent 27 June 2003

Contents

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Prostitution Reform Act 2003.

Part 1
Preliminary provisions

2 Commencement

(1) This Act (other than the provisions referred to in subsection (2)) comes into force on the day after the date on which it receives the Royal assent.

(2) Part 3 and sections 49 and 50(2) come into force 6 months after the date on which this Act receives the Royal assent.

3 Purpose

The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

(a) safeguards the human rights of sex workers and protects them from exploitation:

(b) promotes the welfare and occupational health and safety of sex workers:

(c) is conducive to public health:

(d) prohibits the use in prostitution of persons under 18 years of age:

(e) implements certain other related reforms.

4 Interpretation

(1) In this Act, unless the context otherwise requires,—

brothel means any premises kept or habitually used for the purposes of prostitution; but does not include premises at which accommodation is normally provided on a commercial basis if the prostitution occurs under an arrangement initiated elsewhere

business of prostitution means a business of providing, or arranging the provision of, commercial sexual services

client means a person who receives, or seeks to receive, commercial sexual services

commercial sexual services means sexual services that—

(a) involve physical participation by a person in sexual acts with, and for the gratification of, another person; and

(b) are provided for payment or other reward (irrespective of whether the reward is given to the person providing the services or another person)

member means a member of the Prostitution Law Review Committee

premises includes a part of premises

prostitution means the provision of commercial sexual services

Prostitution Law Review Committee means the committee appointed under section 43

public place—

(a) means a place that is open to, or being used by, the public, whether admission is free or on payment of a charge and whether any owner or occupier of the place is lawfully entitled to exclude or eject a person from that place; and

(b) includes any aircraft, hovercraft, ship, ferry, or other vessel, train, or vehicle carrying or available to carry passengers for reward

sex worker means a person who provides commercial sexual services

small owner-operated brothel means a brothel—

(a) at which not more than 4 sex workers work; and

(b) where each of those sex workers retains control over his or her individual earnings from prostitution carried out at the brothel

territorial authority has the same meaning as in section 5(1) of the Local Government Act 2002.

(2) In this Act, a reference to providing or receiving commercial sexual services means to provide or receive those services personally (rather than arranging another person to provide the services or arranging for the services to be received by another person).

5 Definition of operator

(1) In this Act, **operator**, in relation to a business of prostitution, means a person who, whether alone or with others, owns, oper-

ates, controls, or manages the business; and includes (without limitation) any person who—

(a) is the director of a company that is an operator; or

(b) determines—

(i) when or where an individual sex worker will work; or

(ii) the conditions in which sex workers in the business work; or

(iii) the amount of money, or proportion of an amount of money, that a sex worker receives as payment for prostitution; or

(c) is a person who employs, supervises, or directs any person who does any of the things referred to in paragraph (b).

(2) Despite anything in subsection (1), a sex worker who works at a small owner-operated brothel is not an operator of that business of prostitution, and, for the purposes of this Act, a small owner-operated brothel does not have an operator.

6 Act binds the Crown

This Act binds the Crown.

Part 2
Commercial sexual services

Contracts for commercial sexual services not void

7 Contract for provision of commercial sexual services not void

No contract for the provision of, or arranging the provision of, commercial sexual services is illegal or void on public policy or other similar grounds.

Health and safety requirements

8 Operators of businesses of prostitution must adopt and promote safer sex practices

(1) Every operator of a business of prostitution must—

(a) take all reasonable steps to ensure that no commercial sexual services are provided by a sex worker unless a prophylactic sheath or other appropriate barrier is used if those services involve vaginal, anal, or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections; and

(b) take all reasonable steps to give health information (whether oral or written) to sex workers and clients; and

(c) if the person operates a brothel, display health information prominently in that brothel; and

(d) not state or imply that a medical examination of a sex worker means the sex worker is not infected, or likely to be infected, with a sexually transmissible infection; and

(e) take all other reasonable steps to minimise the risk of sex workers or clients acquiring or transmitting sexually transmissible infections.

(2) Every person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

(3) The obligations in this section apply only in relation to commercial sexual services provided for the business and to sex workers and clients in connection with those services.

(4) In this section, health information means information on safer sex practices and on services for the prevention and treatment of sexually transmissible infections.

9 Sex workers and clients must adopt safer sex practices

(1) A person must not provide or receive commercial sexual services unless he or she has taken all reasonable steps to ensure a prophylactic sheath or other appropriate barrier is used if those services involve vaginal, anal, or oral penetration or another activity with a similar or greater risk of acquiring or transmitting sexually transmissible infections.

(2) A person must not, for the purpose of providing or receiving commercial sexual services, state or imply that a medical

examination of that person means that he or she is not infected, or likely to be infected, with a sexually transmissible infection.

(3) A person who provides or receives commercial sexual services must take all other reasonable steps to minimise the risk of acquiring or transmitting sexually transmissible infections.

(4) Every person who contravenes subsection (1), subsection (2), or subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding $2,000.

10 Application of Health and Safety in Employment Act 1992

(1) A sex worker is at work for the purposes of the Health and Safety in Employment Act 1992 while providing commercial sexual services.

(2) However, nothing in this Act (including subsection (1)) limits that Act or any regulations or approved codes of practice under that Act.

Advertising restrictions

11 Restrictions on advertising commercial sexual services

(1) Advertisements for commercial sexual services may not be—

(a) broadcast on radio or television; or

(b) published in a newspaper or periodical, except in the classified advertisements section of the newspaper or periodical; or

(c) screened at a public cinema.

(2) A person who does any of the things described in subsection (1), or who authorises any of the things described in that subsection to be done, commits an offence and is liable on summary conviction to,—

(a) in the case of a body corporate, a fine not exceeding $50,000; and

(b) in any other case, a fine not exceeding $10,000.

(3) In this section, advertisement means any words, or any pictorial or other representation, used to notify the availability of, or promote the sale of, commercial sexual services, either generally or specifically.

Territorial authority may make bylaws

12 Bylaws controlling signage advertising commercial sexual services

(1) A territorial authority may make bylaws for its district that prohibit or regulate signage that is in, or is visible from, a public place, and that advertises commercial sexual services.

(2) Bylaws may be made under this section only if the territorial authority is satisfied that the bylaw is necessary to prevent the public display of signage that—

(a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area; or

(b) is incompatible with the existing character or use of that area.

(3) Bylaws made under this section may prohibit or regulate signage in any terms, including (without limitation) by imposing restrictions on the content, form, or amount of signage on display.

(4) Parts 8 and 9 of the Local Government Act 2002 (which are about, among other things, the enforcement of bylaws and penalties for their breach) apply to a bylaw made under this section as if the bylaw had been made under section 145 of that Act.

13 Procedure for making bylaws

(1) A bylaw made under section 12 must be made in the same manner in all respects as if it were a bylaw made under the Local Government Act 2002.

(2) Despite subsection (1), a bylaw may be made under section 12 even if, contrary to section 155(3) of the Local Government Act 2002, it is inconsistent with the New Zealand Bill of Rights Act 1990.

14 Bylaws regulating location of brothels

Without limiting section 145 of the Local Government Act 2002, a territorial authority may make bylaws for its district under section 146 of that Act for the purpose of regulating the location of brothels.

Resource consents

15 Resource consents in relation to businesses of prostitution

(1) When considering an application for a resource consent under the Resource Management Act 1991 for a land use relating to a business of prostitution, a territorial authority must have regard to whether the business of prostitution—

(a) is likely to cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or

(b) is incompatible with the existing character or use of the area in which the land is situated.

(2) Having considered the matters in subsection (1)(a) and (b) as well as the matters it is required to consider under the Resource Management Act 1991, the territorial authority may, in accordance with sections 104A to 104D of that Act, grant or refuse to grant a resource consent, or, in accordance with section 108 of that Act, impose conditions on any resource consent granted.

(3) Subsection (1) does not limit or affect the operation of the Resource Management Act 1991 in any way, and it may be overriden, with respect to particular areas within a district, by the provisions of a district plan or proposed district plan.

Protections for sex workers

16 Inducing or compelling persons to provide commercial sexual services or earnings from prostitution

(1) No person may do anything described in subsection (2) with the intent of inducing or compelling another person (person A) to—

(a) provide, or to continue to provide, commercial sexual services to any person; or

(b) provide, or to continue to provide, to any person any payment or other reward derived from commercial sexual services provided by person A.

(2) The acts referred to in subsection (1) are any explicit or implied threat or promise that any person (person B) will—

(a) improperly use, to the detriment of any person, any power or authority arising out of—

(i) any occupational or vocational position held by person B: or

(ii) any relationship existing between person B and person A:

(b) commit an offence that is punishable by imprisonment:

(c) make an accusation or disclosure (whether true or false)—

(i) of any offence committed by any person: or

(ii) of any other misconduct that is likely to damage seriously the reputation of any person; or

(iii) that any person is unlawfully in New Zealand:

(d) supply, or withhold supply of, any controlled drug within the meaning of the Misuse of Drugs Act 1975.

(3) Every person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

17 Refusal to provide commercial sexual services

(1) Despite anything in a contract for the provision of commercial sexual services, a person may, at any time, refuse to provide, or to continue to provide, a commercial sexual service to any other person.

(2) The fact that a person has entered into a contract to provide commercial sexual services does not of itself constitute consent for the purposes of the criminal law if he or she does not consent, or withdraws his or her consent, to providing a commercial sexual service.

(3) However, nothing in this section affects a right (if any) to rescind or cancel, or to recover damages for, a contract for the provision of commercial sexual services that is not performed.

Protections for persons refusing to work as sex workers

18 Refusal to work as sex worker does not affect entitlements

(1) A person's benefit, or entitlement to a benefit, under the Social Security Act 1964 may not be cancelled or affected in any other way by his or her refusal to work, or to continue to work,

as a sex worker (and, in this case, that work is not suitable employment for that person under that Act).

(2) A person's entitlements under the Injury Prevention, Rehabilitation, and Compensation Act 2001 may not be lost or affected in any other way by his or her being capable of working as a sex worker if he or she refuses to do, or to continue to do, that kind of work.

(3) In this section, refusal means a refusal to do this kind of work in general, rather than a refusal of a particular job or at a particular time.

Application of Immigration Act 1987

19 Application of Immigration Act 1987

(1) No permit may be granted under the Immigration Act 1987 to a person on the basis that the person—

(a) has provided, or intends to provide, commercial sexual services; or

(b) has acted, or intends to act, as an operator of a business of prostitution; or

(c) has invested, or intends to invest, in a business of prostitution.

(2) It is a condition of every temporary permit or limited purpose permit granted under the Immigration Act 1987 that the holder of the permit may not, while in New Zealand,—

(a) provide commercial sexual services; or

(b) act as an operator of a New Zealand business of prostitution; or

(c) invest in a New Zealand business of prostitution.

(3) A temporary permit or limited purpose permit granted under the Immigration Act 1987 may be revoked if the holder does any of the things listed in subsection (2)(a) to (c).

(4) If the holder of a residence permit is subject to a requirement under section 18A of the Immigration Act 1987, the requirement is deemed not to have been met (for the purpose of revoking the permit under section 20(1)(d) of that Act) if the permit holder acts as an operator of, or invests in, a New Zealand business of prostitution.

(5) This section applies with respect to every permit granted under the Immigration Act 1987, and to every requirement imposed under section 18A of that Act, whether granted or imposed before or after the commencement of this section.

Prohibitions on use in prostitution of persons under 18 years

20 No person may assist person under 18 years in providing commercial sexual services

No person may cause, assist, facilitate, or encourage a person under 18 years of age to provide commercial sexual services to any person.

21 No person may receive earnings from commercial sexual services provided by person under 18 years

No person may receive a payment or other reward that he or she knows, or ought reasonably to know, is derived, directly or indirectly, from commercial sexual services provided by a person under 18 years of age.

22 No person may contract for commercial sexual services from, or be client of, person under 18 years

(1) No person may enter into a contract or other arrangement under which a person under 18 years of age is to provide commercial sexual services to or for that person or another person.

(2) No person may receive commercial sexual services from a person under 18 years of age.

23 Offence to breach prohibitions on use in prostitution of persons under 18 years

(1) Every person who contravenes section 20, section 21, or section 22 commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 7 years.

(2) No person contravenes section 20 merely by providing legal advice, counselling, health advice, or any medical services to a person under 18 years of age.

(3) No person under 18 years of age may be charged as a party to an offence committed on or with that person against this section.

Powers to enter and inspect compliance with health and safety requirements

24 Purpose of inspection

(1) The powers of inspection in section 26 may be used only for the purpose of determining whether or not a person is complying, or has complied, with section 8 or section 9.

(2) This section does not limit the ability of an inspector to report any other offence or suspected offence to the police or any other relevant agency.

25 Inspectors

(1) Every person designated as a Medical Officer of Health by the Director-General of Health under the Health Act 1956 is an inspector for the purposes of this Act.

(2) A Medical Officer of Health may also appoint persons as inspectors for his or her health district, on a permanent or temporary basis, for the purposes of this Act.

(3) A Medical Officer of Health may appoint a person as an inspector only if satisfied that he or she is suitably qualified or trained to carry out that role.

(4) That appointment must be in writing and must contain—

(a) a reference to this section; and

(b) the full name of the appointed person; and

(c) a statement of the powers conferred on the appointed person by section 26 and the purpose under section 24 for which those powers may be used.

26 Powers to enter and inspect compliance with health and safety requirements

(1) An inspector may, at any reasonable time, enter premises for the purpose of carrying out an inspection if he or she has reasonable grounds to believe that a business of prostitution is being carried on in the premises.

(2) For the purposes of the inspection, the inspector may—

(a) conduct reasonable inspections:

(b) take photographs and measurements and make sketches and recordings:

(c) require any of the following persons to provide information or assistance reasonably required by the inspector:

(i) a person who operates the business of prostitution, or an employee or agent of that person:

(ii) a sex worker or client of the business of prostitution:

(d) take copies of the information referred to in paragraph (c).

(3) An inspector may seize and retain any thing in premises entered under this section that the inspector has reasonable grounds to believe will be evidence of the commission of an offence against section 8 or section 9.

(4) Nothing in this section limits or affects the privilege against self-incrimination.

(5) An inspector may take any person acting under the inspector's direct supervision into the premises to assist him or her with the inspection.

27 Entry of homes

(1) An inspector may not enter a home under section 26 unless he or she—

(a) has the consent of an occupier of that home; or

(b) is authorised to do so by a warrant issued under subsection (2).

(2) A District Court Judge, Justice, Community Magistrate, or Registrar of a District Court (who is not a member of the police) may issue a warrant to enter a home or part of a home if, on application made on oath, he or she is satisfied that there are reasonable grounds for believing that—

(a) a business of prostitution is being carried on in the home; or

(b) the home or the part of the home is the only practicable means through which to enter premises where a business of prostitution is being carried on.

(3) The warrant must be directed to an inspector by name and must be in the prescribed form.

28 Requirements when carrying out inspection

(1) An inspector must, on entering premises under section 26 and when reasonably requested at any subsequent time, produce—

(a) evidence of his or her designation as a Medical Officer of Health or appointment as an inspector by a Medical Officer of Health; and

(b) evidence of his or her identity; and

(c) a statement of the powers conferred on the inspector by section 26 and the purpose under section 24 for which those powers may be used; and

(d) if entering a home under a warrant issued under section 27(2), that warrant.

(2) If the owner or occupier of the premises is not present at the time an inspector enters and inspects the premises, the inspector must—

(a) leave in a prominent location at those premises a written statement that includes the following information:

(i) the time and date of the entry; and

(ii) the name of the person who entered the premises; and

(iii) the fact that the person is an inspector; and

(iv) the reasons for the entry; and

(v) the address of the office of the Ministry of Health to which enquiries should be made; and

(b) take all other reasonable steps to give that information to the owner or occupier of the premises.

(3) If any thing is seized in the course of an inspection, the inspector must leave in a prominent location at the premises, or deliver or send by registered mail to the owner or occupier within 10 working days after the entry, a written inventory of all things seized.

(4) Section 199 of the Summary Proceedings Act 1957 applies to any thing seized in the course of an inspection (as if the inspector were a constable and with any other necessary modifications).

29 Obstructing inspectors

Every person commits an offence, and is liable on summary conviction to a fine not exceeding $2,000, who intentionally obstructs, hinders, or deceives an inspector in the execution of a power or duty under this Act.

Powers of entry

30 Warrant for police to enter

(1) A District Court Judge, Justice, Community Magistrate, or Registrar of a District Court (who is not a member of the police) may issue a warrant to enter a place if he or she is satisfied that—

(a) there is good cause to suspect that an offence under either of the following provisions is being, has been, or is likely to be committed in the place:

(i) section 23 (which concerns using persons under 18 years in prostitution):

(ii) section 34 (which concerns being an operator while not holding a certificate); and

(b) there are reasonable grounds to believe that it is necessary for a member of the police to enter the place for the purpose of preventing the commission or repetition of that offence or investigating that offence.

(2) An application for a warrant must be made in writing and on oath.

(3) The Judge, Justice, Community Magistrate, or Registrar may impose any reasonable conditions on the exercise of the warrant that he or she thinks fit.

31 Form and content of warrant

(1) A warrant under section 30(1)(a) must be in the prescribed form and state—

(a) the place that may be entered; and

(b) which of the offences listed in section 30 the warrant has been issued in respect of; and

(c) the period during which the warrant may be executed, which must not exceed 14 days from the date of issue; and

(d) any conditions that apply to the warrant under section 30(3).

(2) The warrant must be directed generally to every member of the police.

32 Powers conferred by warrant

(1) Subject to any conditions stated in the warrant, a warrant under section 30 authorises the person executing it to—

(a) enter and search the place stated in the warrant at any time of the day or night; and

(b) use the assistance that is reasonable in the circumstances to enter and search the place; and

(c) use the force that is reasonable in the circumstances to gain entry and to break open any thing in, on, over, or under the place; and

(d) search for and seize any property or thing that the person has reasonable grounds to believe will be evidence of the commission of an offence in respect of which the warrant is issued.

(2) A person who is called to assist to execute the warrant may exercise the powers described in subsection (1)(c) and (d).

(3) The power to enter a place under the warrant may be exercised once only.

33 Requirements when executing warrant

(1) A member of the police who executes a warrant under section 30 must, on entering the place and when reasonably requested at any subsequent time, produce—

(a) the warrant; and

(b) if not in uniform, evidence that he or she is a member of the police.

(2) If the owner or occupier of the place is not present at the time the warrant is executed, the member of the police must—

(a) leave in a prominent location at the place a written statement that includes the following information:

(i) the time and date of the entry; and

(ii) the name of the member of the police who entered the place; and

(iii) the fact that the person is a member of the police; and

(iv) the reasons for the entry; and

(v) the address of the police station to which enquiries should be made; and

(b) take all other reasonable steps to give that information to the owner or occupier of the place.

(3) If any thing is seized in the execution of the warrant, the member of the police must leave in a prominent location at the place, or deliver or send by registered mail to the owner or occupier within 10 working days after the entry, a written inventory of all things seized.

(4) Section 199 of the Summary Proceedings Act 1957 applies to any thing seized in the execution of the warrant (with any necessary modifications).

Part 3
Operator certificates

34 Operators of businesses of prostitution to hold certificates

(1) Every operator of a business of prostitution (other than a company) must hold a certificate issued under section 35.

(2) Every person who, while required by subsection (1) to hold a certificate, does not hold a certificate commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

(3) If a person who is charged under subsection (2) claims that he or she is not an operator because he or she is a sex worker at a small owner-operated brothel and is not an operator of any other business of prostitution, it is for the person charged to prove that assertion on the balance of probabilities.

(4) Despite subsection (2), no person may be convicted of an offence under that subsection if the period during which the person does not hold a certificate is the first 6 months after this section comes into force.

35 Application for, and grant of, certificates

(1) An applicant for a certificate must apply to the Registrar.

(2) In this Part, Registrar means the Registrar of the District Court at Auckland, or the Registrar of any other District Court identified in regulations made under this Act as the, or a, Registrar who may accept applications under this section.

(3) The application must be in the prescribed form and be accompanied by the prescribed fee.

(4) The application may require the applicant to provide no more than the following:

(a) the applicant's full name, date of birth, and gender:

(b) any other names by which the applicant is, or ever has been, known:

(c) the address to which the applicant wishes any certificate and related correspondence to be sent:

(d) a photocopy of any form of official identification that contains a photograph of the applicant, such as a passport or driver licence, that is authenticated in the prescribed manner:

(e) 1 or more recent photographs of the applicant that comply with the prescribed requirements and are authenticated in the prescribed manner:

(f) if an order has been made under section 37, a copy of the order.

(5) The Registrar must issue a certificate to an applicant if—

(a) the applicant pays the prescribed fee, supplies a properly completed application form, and attaches the required photocopy and photographs; and

(b) the applicant is aged 18 years or older; and

(c) the applicant is either—

(i) not disqualified under section 36 from holding a certificate; or

(ii) is disqualified, but has been granted a waiver of disqualification under section 37 and the waiver has not been cancelled.

(6) Every certificate must be in the prescribed form and must contain a photograph of the holder.

(7) If a certificate is refused, the Registrar must notify the applicant in writing, with reasons, and give information about how to apply for a waiver of disqualification under section 37.

36 Disqualification from holding certificate

(1) A person is disqualified from holding a certificate if he or she has been convicted at any time of any of the disqualifying offences set out in subsection (2), or has been convicted of an attempt to commit any such offence, of conspiring to commit any such offence, or of being an accessory after the fact to any such offence.

(2) The disqualifying offences are as follows:

(a) an offence under this Act (other than an offence under section 39(3), section 40(2), and section 41(3)):

(b) an offence under any of the following sections or Parts of the Crimes Act 1961 that is punishable by 2 or more years' imprisonment:

(i) section 98A (participation in an organised criminal group):

(ii) sections 127 to 144C (includes sexual crimes):

(iii) Part 8 (includes murder, manslaughter, assault, and abduction):

(iv) sections 234 to 244 (robbery, extortion, and burglary):

(v) section 257A (money laundering).

(c) an offence under the Arms Act 1983 that is punishable by imprisonment:

(d) in relation to the Misuse of Drugs Act 1975,—

(i) an offence under section 6 (other than possession of a Class C controlled drug):

(ii) an offence under section 9, section 12A, section 12AB, or section 12B:

(iii) an offence under any other section, but only if it relates to a Class A or a Class B controlled drug.

Subsection (2)(d)(ii) was amended, as from 22 June 2005, by section 23 Misuse of Drugs Amendment Act 2005 (2005 No 81) by inserting the expression "section 12AB." after the expression "12A.".

37 Waiver of disqualification

(1) A person who is disqualified from holding a certificate may apply in writing to the Registrar for an order waiving the disqualification.

(2) On receipt of an application, the Registrar must—

(a) refer the application to a District Court Judge for determination; and

(b) send a copy of the application to the Commissioner of Police for a report on the matters referred to in subsection (4)(b).

(3) The Commissioner of Police must provide a report to the Registrar within 3 weeks of receipt of the request, and the Registrar must immediately forward a copy of the report to the applicant.

(4) A District Court Judge may make an order waiving a disqualification if he or she is satisfied that—

(a) the applicant's offending was of a nature, or occurred so long ago, that it ought no longer to be a barrier to obtaining a certificate; and

(b) the applicant is not, and has not recently, been associated or involved with persons who would themselves be disqualified under section 36 and who might reasonably be expected to exert an influence on the applicant.

(5) The District Court Judge who determines the application—

(a) may not make the order until at least 2 weeks after receipt of the report provided under subsection (3); and

(b) must determine the application on the basis of the material contained in the application, the police report, and any further written material provided by the applicant, whether in response to the police report or otherwise.

(6) An order waiving disqualification remains in force until it is cancelled under subsection (7) or subsection (8).

(7) An order waiving a disqualification is cancelled, by operation of this subsection, if the person to whom it applies is convicted of any offence referred to in section 36(2).

(8) A District Court Judge may cancel an order waiving a person's disqualification if—

(a) the police make an application to the Registrar for an order cancelling the waiver; and

(b) a copy of the police application is sent to the person at the address supplied in his or her application for a certificate; and

(c) at least 2 weeks after sending that application, either the Registrar has not received any response from the certificate holder or, if the holder has made submissions in writing, the District Court Judge has considered those submissions; and

(d) the District Court Judge is satisfied, on the basis of the police application and any submissions received from the person concerned, that the waiver ought to be cancelled on the grounds that the person is associated or involved with persons who would themselves be disqualified under section 36 and who might reasonably be expected to be exerting an influence over the person.

38 Expiry, renewal, and replacement of certificate

(1) A certificate expires 1 year after the date on which it is issued.

(2) A certificate holder may apply, at any time within 2 months before the expiry of his or her certificate, for renewal of the certificate, in which case section 35 applies as if the application for renewal were an application for a certificate.

(3) If an application for renewal is made, but not determined, before a certificate expires, the original certificate does not expire until the application for renewal is determined.

(4) The Registrar may issue a replacement certificate to a certificate holder if—

(a) the holder applies for a replacement certificate and the Registrar is satisfied that the original certificate has been lost or destroyed; and

(b) the holder supplies 1 or more recent photographs of himself or herself that comply with the prescribed requirements and are authenticated in the prescribed manner; and

(c) the holder pays the prescribed fee (if any).

39 Cancellation of certificate

(1) The Registrar must cancel a certificate on notification that the certificate holder—

(a) is disqualified from holding a certificate as a result of a conviction for any offence referred to in section 36(2); or

(b) has had his or her waiver of disqualification cancelled.

(2) The cancellation of the certificate takes effect 5 days after notification of the cancellation is sent to the certificate holder at the address supplied in his or her application for a certificate.

(3) A person whose certificate is cancelled commits an offence, and is liable on summary conviction to a fine not exceeding $2,000, if he or she fails to return the certificate to a District Court within 1 month of the cancellation of the certificate.

40 Operator to produce certificate on request

(1) A member of the police may, on producing evidence that he or she is a member of the police, require any person whom the member believes on reasonable grounds is an operator to produce that person's certificate for inspection, and the person must produce his or her certificate to the member, or to another member of the police at a local police station, within 24 hours of the request.

(2) If a request under subsection (1) is made to the holder of a certificate, that holder commits an offence, and is liable on summary conviction to a fine not exceeding $2,000, if he or she fails without reasonable excuse to produce his or her certificate as required by that subsection.

41 Court records

(1) Court records concerning the identity of applicants for certificates, applicants for waiver of disqualification, and certificate holders may be searched, inspected, or copied only by—

(a) the applicant or holder concerned; and

(b) the Registrar; and

(c) the police, but only for the purpose of investigating an offence.

(2) Nothing in this section limits the power of the Registrar to prepare and supply (whether for use by the Department for Courts or any other purpose) statistical information about applicants for certificates, applicants for waiver of disqualification, and certificate holders, as long as the information is supplied in a form that does not identify individual applicants or certificate holders.

(3) A person who, in contravention of this section, obtains or uses information that is sourced from, or purports to be sourced from, the court records referred to in this section commits an offence and is liable on summary conviction to a fine not exceeding $2,000.

Part 4
Miscellaneous provisions

Review of operation of Act and related matters by Prostitution Law Review Committee

42 Review of operation of Act and related matters

(1) The Prostitution Law Review Committee must,—

(a) as soon as practicable after the commencement of this Act,—

(i) assess the number of persons working as sex workers in New Zealand and any prescribed matters relating to sex workers or prostitution; and

(ii) report on its findings to the Minister of Justice; and

(b) no sooner than the expiry of 3 years, but before the expiry of 5 years, after the commencement of this Act,—

(i) review the operation of this Act since its commencement; and

(ii) assess the impact of this Act on the number of persons working as sex workers in New Zealand and on any prescribed matters relating to sex workers or prostitution; and

(iii) assess the nature and adequacy of the means available to assist persons to avoid or cease working as sex workers; and

(iv) consider whether any amendments to this Act or any other law are necessary or desirable and, in particular, whether the system of certification is effective or could be improved, whether any other agency or agencies could or should administer it, and whether a system is needed for identifying the location of businesses of prostitution; and

(v) consider whether any other amendments to the law are necessary or desirable in relation to sex workers or prostitution; and

(vi) consider whether any further review or assessment of the matters set out in this paragraph is necessary or desirable; and

(vii) report on its findings to the Minister of Justice; and

(c) carry out any other review, assessment, and reporting required by regulations made under this Act.

(2) The Minister of Justice must present a copy of any report provided under this section to the House of Representatives as soon as practicable after receiving it.

43 Prostitution Law Review Committee

(1) The Prostitution Law Review Committee must consist of 11 members appointed by the Minister of Justice.

(2) The Minister of Justice must appoint—

(a) 2 persons nominated by the Minister of Justice; and

(b) 1 person nominated by the Minister of Women's Affairs after consultation with the Minister of Youth Affairs; and

(c) 1 person nominated by the Minister of Health; and

(d) 1 person nominated by the Minister of Police; and

(e) 2 persons nominated by the Minister of Commerce to represent operators of businesses of prostitution; and

(f) 1 person nominated by the Minister of Local Government; and

(g) 3 persons nominated by the New Zealand Prostitutes Collective (or, if there is no New Zealand Prostitutes Collective, by any other body that the Minister of Justice considers represents the interests of sex workers).

(3) The Minister of Justice may, on the recommendation of a member's nominator, remove a member from office for inability to perform the members' duties, misconduct by the member, or any other just cause proved to the satisfaction of the nominator.

(4) The member is not entitled to compensation or other payment relating to removal from office.

(5) The Prostitution Law Review Committee ceases to exist on a date appointed by the Minister of Justice, by notice in the *Gazette*, that is after the date of its report to the Minister under section 42(1)(b)(vii).

44 Other provisions on appointment, removal, term, and resignation of members

(1) A member must be appointed or removed by written notice to the member and his or her nominator.

(2) A member holds office for a term stated in that notice of up to 5 years.

(3) A member whose term of office expires continues to hold office until he or she is reappointed or his or her successor is appointed.

(4) However, all members cease to hold office on the date on which the Prostitution Law Review Committee ceases to exist.

(5) A person may be reappointed as a member.

(6) A member may resign by written notice to the Minister of Justice and his or her nominator.

(7) The powers of the Prostitution Law Review Committee are not affected by any vacancy in its membership.

45 Remuneration of members

(1) A member is entitled to receive remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951 (and the provisions of that Act apply as if the Prostitution Law Review Committee were a statutory Board under that Act).

(2) That remuneration must be paid out of the departmental bank account operated by the Ministry of Justice.

(3) This section does not apply to a person who is a member in his or her capacity as an employee of a department.

46 Procedure of Prostitution Law Review Committee

The Prostitution Law Review Committee may regulate its own procedure, except as provided in regulations made under this Act.

Regulations

47 Regulations

The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing the forms of warrants to be issued under sections 27 and 30:

(b) prescribing the forms, certificates, and fees required under Part 3 in connection with operator certificates:

(c) prescribing how the photographs and photocopies required under Part 3 are to be authenticated:

(d) prescribing the size, or range of sizes, of photographs to be supplied with an application for a certificate, and the number of copies:

(e) prescribing that the Registrar of a particular District Court is the, or a, Registrar for the purposes of Part 3, whether in addition to, or instead of, the Registrar of any other District Court:

(f) prescribing matters relating to the Prostitution Law Review Committee, including its powers, additional functions of reviewing, assessing, and reporting on the operation of this Act or on other matters relating to sex workers or prostitution (if any), any limits on the periods for which it may meet, matters relating to the chairperson and members, its financial provisions, its procedures, and its administration:

(g) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

Repeals, amendments, and transitional provisions

48 Repeals coming into force on day after Royal assent

(1) The following enactments are repealed:

(a) sections 147 to 149A of the Crimes Act 1961 (1961 No 43) (1961 No 43):

(b) section 26 of the Summary Offences Act 1981 (1981 No 113) (1981 No 113).

(2) Sections 30(1)(e), 31(1)(d), and 32 of the Massage Parlours Act 1978 are repealed.

49 Repeals and revocations coming into force when Part 3 comes into force

(1) The Massage Parlours Act 1978 (1978 No 13) is repealed.

(2) The Massage Parlours Regulations 1979 (SR 1979/35) are revoked.

50 Consequential amendments

(1) The Acts specified in Part 1 of the Schedule are consequentially amended in the manner set out in that schedule.

(2) The regulations specified in Part 2 of the Schedule are consequentially amended in the manner set out in that schedule.

51 Transitional provisions for past offences

(1) No person may be convicted of an offence against any of the enactments repealed by section 48 (other than an offence against section 149A of the Crimes Act 1961) on or after the commencement of this Act if the offence was committed before the commencement of this Act.

(2) The repeal of section 149A of the Crimes Act 1961 does not affect a liability to conviction or to a penalty for an offence committed against that section before the commencement of this Act, and that section continues to have effect as if it had not been repealed for the purposes of—

(a) investigating the offence:

(b) commencing or completing proceedings for the offence:

(c) imposing a penalty for the offence.

Schedule

s 50

Consequential amendments to enactments

1

Acts amended

District Courts Act 1947 (1947 No 16)

Insert in Part 2 of Schedule 1A, after Part A, the following Part:

1—*continued*

Part AB. Offences against the Prostitution Reform Act 2003

Section of Act	Offence
16	Inducing or compelling persons to provide commercial sexual services or earnings from prostitution

Summary Offences Act 1981 (1981 No 113)

Omit from the heading before section 26 the words "Soliciting and".

Summary Proceedings Act 1957 (1957 No 87)

Omit from Part 1 of Schedule 1 the items relating to sections 147 to 149A of the Crimes Act 1961.

Insert, in its appropriate alphabetical order, in Part 2 of Schedule 1 the following item:

The Prostitution Reform Act 2003	section 23	Offence to breach prohibitions on use in prostitution of persons under 18 years

2

Regulation amended

Fees Regulations 1987 (SR 1987/68)

Revoke so much of the Schedule as relates to the Massage Parlours Regulations 1979, Amendment No 1.

Legislative history

21 September 2000	Introduction (Bill 66-1)
8 November 2000	First reading and referral to Justice and Electoral Committee
26 November 2002	Reported from Justice and Electoral Committee (Bill 66 2)
19 February 2003	Second reading
26 March, 30 April, 14 May, 11 June 2003	Committee of the whole House (Bill 66-3)
25 June 2003	Third reading